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SELECTIONS FROM RECORDS

OF THE

GOVERNMENT OF THE PANJAB,

PAPERS

CONNECTED WITH THE QUESTION

OF

TENANT RIGHT IN THE PANJAB.

Lahore:

PRINTED AT THE "INDIAN PUBLIC OPINION" PRESS, BY G. H

18[illegible]

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GLOSSARY OF URDU AND PANJABI TERMS USED IN THE VOLUME.

Abâdi. The village site.

Ahansâr. Under agreement.

Asami. A resident tenant.

Athog. A remission on the ordinary grain rates of rent.

Bahoi, Mohásalí. Carriage of grain by the tenant to the proprietor's house. A service claimable.

Banjar. Waste Land.

Bankar. Forest Produce.

Baráni. Unirrigated land.

Battai. Rent taken in kind by division of the crop.

Bechiragh. Without lamp—deserted: applied to an uninhabited village.

Bela. Low lying land on a river bank.

Bhaiwál. A partner or one related to the proprietor.

Bhouliya. A tenant paying battai in grain rates.

Bhúsa. Fodder.

Bhyachára. Estate in which the land is held part in common, part in severalty and the profits of the common land divided according to custom.

Bhyachára Pattidari. A form of the above tenure.

Bigah. A measure of land. About half an acre.

Biswî. The custom of taking rent.

Biswahdár. A holder of a share in a village.

Bunna Chár. A tax paid by the tenant to the landowner of one load of fodder per field.

Buta Már. A tenant who has cleared waste land.

Buta Shikâfi. Clearing the soil.

Chaháram. A fourth.

Cháhí. Land irrigated by wells.

Chhog. A remission of ordinary grain rates of rent.

Chúra. Village servant-sweeper.

Daira. Shrine.

Dharamsala. A Hindu poor house.

Dhotra. Descendant on the female side.

Ghair Maurúsí. Non-hereditary.

Ghumao. A measure of land ⅝th of a British statute acre—In the Panjab plains 3,630 square yards.

Girwídár. Mortgagee.

Hákim. Lord. Judge.

Hákimí. Lordship.

Hamsayah. Neighbour. Also a protected tenant in some parts of the Panjáb.

Haq-faiq. Seignorage.

Hissa chuk. One co-parcener cultivating for another in a separate holding. One who shares in the payment of revenue being a resident cultivator.

Hissadár. Sharer in the village ownership.

Ismi. A rent charge.

Jadíd. New.

Jagîr. A revenue free holding for service.

Jagirdar. Holder of such a grant.

Jalkar. The Piscary of tanks or streams.

Jamma. The Government Revenue assessed on the land.

Kabuliyat. An agreement.

Kadîmi. Old.

Kama. A village servant.

Kamîn. Ditto.

Kanál. A measure of land 453 square yards.

Kankut. Rent taken by an appraisement of the crop.

Kardár. A Revenue Collector under a native Government.

Karzdar. A creditor.

Khálsa. Land held directly by Government.

Kháta Sánji. Tenant of "common holdings" belonging to proprietor.

Kháta Vakrí. Tenant of "separate holdings" belonging to proprietor, or one proprietor cultivating for another in a separate holding.

Khám. Land under sequestration for a term of years.

Khángah or Khânkah. Shrine or Monastery.

Khewat Khationí. The abstract paper of holdings, occupancy and liabilities.

Kúra. Manure or rubbish.

Kurni. Relationship by Marriage.

Lambardar. Head of a Village.

Máafi. A Revenue free grant.

Máafidar. The holder of such a grant.

Malba. A village cess, paid by proprietors.

Málik. Landowner.

Malik.—Adna. Sub-proprietor.

Malik Makbuza. Do.

Málikana. Rent.

Máliki. The custom of taking rent.

Mángami. (Mángna.) Same as Hissa chuk. A tenant bound to give up his holding when asked

Masjid. A mosque.

Maund. A measure of weight. A *pakka* maund is 80 lbs. a *katcha* maund varies in every district.

Maurúsi. Hereditary.

Mirási. A village bard.

Mouzah. A village: an estate.

Mudli. A tenant with inherited occupancy.

Mustakìlí. Fixed. Confirmed. Applied to hereditary tenants.

Mukadam. Head man of a village.

Muzára. A Tenant.

Nazrana. Fee. Fine on succession.

Nowâsa. Descendant on the female side.

Oprahu. A tenant-at-will living in another village.

Pahí. A non-resident tenant.

Pahíkásht. Do.

Panchayat. A committee of arbitration originally *five* (*Pànch*, five.)

Parganah. Sub-division of a Revenue District.

Pattah. A lease.

Pattahdár a leaseholder.

Patti. A share in a village.

Pattídár. The holder of a share.

Pattidarí. An estate held in severalty.

Patwari. The village revenue accountant.

Phalkar. Produce of Fruit Trees.

Pichlag. Issue of a widow by a former marriage.

Pindwàla. A resident tenant.

Sák. Relationship.

Sepí. A village servant.

Silábi. Land watered by river inundation.

Sir. A measure of quantity. 2 lbs.

Sulog. A remission of the ordinary grain rates of rent.

Takia. The residence of a professional mendicant.

Taraf. A Division of a village.

Tehsil. Collection of Revenue. The headquarters of a Revenue Sub-division.

Tehsildâr. A revenue collector.

Thákurdwára. A Hindu temple.

Ulema. A village priest.

Vandi. A tenant-at-will living in another village.

Variám. A tenant who has cultivated for several years.

Vási. A resident cultivator.

Zabtí. The most valuable crops.

Zamindar. A cultivating proprietor (in the Panjab).

Zamindári. An estate held in common.

Zillah. A District. A Division of a province for administrative purposes.

THE present volume contains all documents of importance that have been published during the last four years on the subject on Tenant Right in this Province, and are now, for convenience of reference, published in a collected form by order of the Government of the Panjab.

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PROPOSED TENANT CODE.

No. 909 of 1860.

FINANCIAL COMMISSIONER'S OFFICE,

Lahore, the 15th October 1860.

TO THE SECRETARY TO GOVERNMENT, PUNJAB

Object of the proposed code.

SIR,—I have been for some time preparing a report on the relations betwixt land owner and tenant in the Punjab, with a view of reducing the practice on this important subject to some uniform system. In the enclosed draft Code of Rules, I have entered all the points, which have been ruled, or admitted; I have added suggestions, the result of my own experience and constant inquiry; I do not pretend to aim at finality; I look on this as the first step made forward in a very important measure; I do not wish local officers to warp local customs so as to bring them to one standard, but by placing within reach of ready reference a distinct and intelligible practice, to compel Judicial Officers to show cause for any deviation, and support exceptional decisions by substantiating the existence of an exceptional custom. Thus, gradually, a correct code of agrarian law will be compiled.

Reply to Government letter.

2.—While the work was still uncompleted, your No. 2211, dated 28th August last, with enclosure from the Supreme Government, came to hand, to which this must be considered a reply.

Circulars and Correspondence.

3.—The Circulars quoted in the margin have been issued on this important subject, and I enclose a file of correspondence in the time of Mr. Edmonstone, Financial Commissioner, which bears on a main branch of the subject, and which will well repay perusal.

The effect of the first settlements on the country.

4.—I do not think that much mischief has been done as yet; the settlements of Punjab proper are but just completed, and are for ten years only; but those for the Cis-Sutlej States, and Trans-Sutlej States are for thirty years. Moreover, I fear that the average pressure of our Settlement is so heavy, that there is not as yet much room for rent. We have granted reductions of lakhs of rupees, but the price current has fallen faster than the reveuue, the introduction of cash payments, fixed for a term of years, has created a new order of things; with the introduction of new staples, and improved means of transport, a reaction may follow; agricultural prospects will then improve: rent will increase, or come into existence, and we shall then find that great mischief will have been done, if we allow lapse of time to give a value to omissions and mistakes, if we do not lay down clearly and distinctly what are the rights of the land owner and the tenant.

5.—Amidst the clashing of opinions of men who have studied the subject and the lax and wild phraseology of rash or careless plungers in the dark, I have tried to steer clear of the two opposite dangers, of attempting to bring down conflicting customs to one unbending and unsuitable law, or of allowing the whole subject to remain in a state of mist and obscurity. I have tried to find the solution of every difficulty in a regular suit, bringing out distinct issues, to be disposed of, if necessary, by a jury directed by a skilled Revenue Officer. Contract, customary, parole, or written, must be the basis of the relation betwixt land owner and tenant; mutual advantage must be the cement which holds them together, and agricultural improvement the object which the Government keeps in view.

The only method of determining rights.

6.—Our position is essentially different from that of the N. W. Provinces at the time when the Record of Rights was prepared in that Province. Thirty years of peace and protection from foreign war and internal violence had allowed the status of land owner and tenant, the question of property and rent, to be adjusted by custom, and a long course of decisions of the Civil Courts, independent of the executive. But in the Punjab our Settlement Officers, armed with full judicial and executive powers, came face to face with the dissolving, but still undissolved elements of the native system. Names bore an uncertain meaning; rights were expiring, or undeveloped; Judicial Courts had never existed; the ruler was in effect, through his servants or assignees, the great land *lord* though not land *owner*. We had to decide betwixt the bold and influential parties in possession without right, and the weak and unenterprizing impractical parties, who had right, but lost possession. Race had trodden down race, and grants of new rulers had overpowered ancestral claims. The only thing which had remaind unchanged, was the burden of the Government revenue, which had reduced all, proprietor and tenant, to one dead level.

The difficulty of discovering the truth at the first settlements.

7.—It was a bold measure, and one of which we may be proud, that within ten years from the date of annexation we have more or less finished our task, and compiled a Doomsday book, in which every right is more or less correctly recorded. We have limited the demand of Government; we are prepared to go further, if necessary; what is required now is that the officers who are to work the Settlement, should understand the characteristics of the new state of affairs, and leave to the people, or the Judicial Courts, the task of elaborating the details, expanding undeveloped rights, and amending errors. Misapprehensions must be removed; decisions must run on parallel grooves; it will not do to allow each officer, from the highest to the lowest, to erect a pinnacle of private opinion, and by ignorance, or carelessness, or a want of appreciation of the issue, destroy the rights which are coming into existence.

The work remaining to be done.

8.—I believe that my remarks in the enclosed Code on the status of the village land owner will be admitted without dispute. I have quoted in the margin the authorities, and my deductions are obvious. You may perhaps think some unnecessary, but I have lately had a case of a large land owner dismissed from the Lumberdaree, *because he did not reside in his village.* No doubt the officer who passed the order, looked on the Lumberdar as a kind of Government official, who must be in personal attendance.

Status of the village land owner.

The Sub-proprietor, as distinguished from the hereditary tenant.

9.—With regard to my definition of sub-proprietor, I am prepared to meet opposition of every kind; those who think deeply, may anticipate a collapse of the village system as the result; I am the last to wish such a catastrophe; those who do not look below the surface, may ask why this class is distinguished from the hereditary cultivator? I reply that the existence of intermediate tenures, which are heritable, and transferable and not terminable, is admitted by the highest authority; moreover, *they do exist*; they must increase; they afford an escape from inconsistencies,—for a tenant, who can never be called on to pay rent, is an inconsistency; converted into a sub-proprietor, he is the owner of an intelligible property. I cannot see why a tenant of a limited area (not village) may not, by lapse of time, and by the effect of circumstances, expand into a proprietor, as well as a community of tenants can by lapse of time expand into a community of proprietors, owning and engaging for the revenue of the whole village; of this latter phase we have hundreds of instances. For the circumstances of the Punjab this tenure is specially suited. The compulsory sale law will never come into existence, the sales by decree of Court are restricted; the old communities will never be disturbed, and will maintain their political importance; but to the class of "sub-proprietors," and "tenants on written leases," (who will be described below) we must look as the only channels for the introduction of capital in the improvement of land. I am not prepared to say that this class under no circumstances can be required to pay a seignorage, or "huqfaiq" to the village owner; as the tenure is based on customary rights, and also on contract betwixt parties, it is impossible to say that cases may not occur.

The classes of tenants.

10.—We now come to tenants. I think that it will be admitted that there are four (4) kinds of tenants, though sufficient discrimination betwixt the status of each is not always maintained: I think that it will be admitted, that one person may possess two or more kinds of tenant rights, and that a misdescription should be corrected;—for, as Mr. McLeod remarks in his Annual Report for 1857-58, 1858-59, "where tenants at will are regarded as liable to summary "ejectment, or enhancement, it is very necessary that it should be clearly "ascertained that they have been correctly recorded *as such*, for there "is hardly any point, on which our records can with justice be less "trusted."

The tenant on fixed rates.

11.—The tenant on fixed and immutable rates, though of comparatively rare occurrence, has, by being confounded with the hereditary tenant, who occupies the next rank, been the cause of most of the misconceptions which exist. His status and his origin is quite clear. He differs from the sub-proprietor, in that he is only a tenant, and that a period may come, when his rights will cease, and he differs from the hereditary tenant, in that his payment is absolutely fixed for term of Settlement. The defintion given in the Directions to Settlement Officers para. 118, is expanded in *para.* 9 of the letter of the Secretary to Government N. W. Provinces, No. 1007 of 1849, *vide* Mr. Thomason's despatches, page 477.

The hereditary tenant.

12.—We now come to the case of the hereditary tenant, the peculiarity of whose tenure I have defind in XXIII Positions, in some of which I may be supported by general consent; in others

I may stand alone. The first Position will be generally admitted, but it is on the second that we meet with the greatest misconceptions: to remove these I now address myself.

13.—Mr. McLeod, in his Annual Revenue Report for 1857-58, 1858-59 para. 73, remarks as follows: "The more favored hereditary cultivator pays the revenue on equal terms with the proprietors, so that the latter derives no present profit whatever from their lands, and the only advantages accruing to them are of an indirect and reversionary character. This has been perpetuated by our Settlement Officers: but there can be no doubt, that it is prejudicial in many ways, militates against the improvement of the land, and is altogether anomalous, while it may be a question, whether under our system, which stereotypes the status, which we once acknowledge or establish in a manner unknown before, it is right to give our sanction to such an arrangement. Where the whole value of the land is in fact derived from the outlay of capital on wells, it seems preposterous, that the acknowledged owner should derive no profit whatever, and generally the idea of proprietary right conferring no material advantage is one on which the people begin freely to remark on as "*absurd*."

Mr. McLeod's Revenue Report of 1858-59.

14.—Mr. McLeod published Book Circular XXVII. of 1858 on the subject of rent; it is one of the inconveniences of the Punjab Revenue Courts having judicial power, that it is not always clear whether a Circular is a judicial precept, or an administrative order: Mr. McLeod in this Circular quotes a principle laid down by Mr. Wynyard, Settlement Officer of Amballa, "that a tenant with right of occupancy enjoyed immunity from enhancement of rent within terms of Settlement." As regards the Revenue Courts this is true, but as regards the Civil Courts (in this province the Judicial Revenue Courts) it is entirely a misconception, if the principle is to be taken as strictly true in all cases.

Financial ruling on the subject of rent.

15.—In a letter, which as Commissioner of Umritsur I addressed to Mr. McLeod (No. 67 of 10th March 1859), which I enclose in original, I pointed out the great inconveniences and loss which would arise from a continuance of this state of affairs, and I rejoice that it has fallen to my lot to bring the subject forward; the imperfection and inconsistency of the present state of affairs is illustrated by a remark of Mr. Davies, Settlement Officer of Baree Doab, in his No. 50 of 1853 (enclosed). The theory of average revenue rates, as a means of distributing the Government demand, is based on the fact that there has been an equal distribution of good and bad land among the coparceners: where a tenant pays an average rate, if he has not a fair share of good and bad land he is paying heavier than others, and is unconsciously a rent payer, and where he has an equal share of good and bad land, he is evidently, by the permission of the land owner, something more than a tenant, and little less than a coparcener.

The present state of the land unsatisfactory.

16.—Mr. Edmonstone issued a Circular in 1853, calling for information on the subject of fixing a maximum of malikaneh at 26 per cent above the jumma: on receipt of the replies from the four Commissioners, in a note which he recorded on leaving office in April 1854, he deemed it unadvisable to issue any general order. Where Mr. Edmonstone dropped the subject, there it remained, but a notable

Mr. Edmonstone proposition for maximum *Malikana*.

change has come over affairs, for at that time the hereditary cultivator required protection; it is now the proprietor who is practically ousted. If there is any doubt, let Mr. Edmonstone's Circular of 1853 be compared with the extract of Mr. McLeod's Annual Roport quoted in para. 13.

The mode of recording the rent at Settlement.

17.—I will not now enter critically into the mode adopted of recording the rent at Settlement. Mr. Melvill in his printed Settlement Report on Hoshyarpoor states, para. 191, "that tenants who have not hitherto paid any proprietary rights have been *excused* from such in future." In Jeswan Doon, of the same district, Mr. Barnes fixed a grain rent of 45 maunds per cent, and, in commuting this grain to cash at the request of the hereditary tenants, Mr. McLeod has ordered forty per cent. malikaneh. Major Lake, the Commissioner, loudly protests at this variety of practice in a portion of one district. Mr. Temple, in his printed Settlement Report of Jullundhur, appears to have fixed 18 per cent. absolutely in addition to village expenses, where no known rate existed. Mr. Davies, Settlement Officer of Baree Doab, in his letter to Mr. Raikes, No. 50 of 1853 (enclosed) does not pretend to have done more than registering rent existing or agreed upon by the parties for term of Settlement, and he was opposed to the arbitary enforcement of any maximum. Now if it really had been the wish of Government to fix the rent of any class of tenants absolutely, as much attention ought to have been paid to this as to fixing the jumma.

It was not the wish of Government to fix the rent absolutely.

18.—But no such intention could have been entertained. Mr. Edmonstone's Circular and note places it beyond a doubt, that whatever was done in the way of fixing, or recording rents was done under the general orders of the Directions to Settlement Officers N. W. Provinces, para. 135; let us recollet how cruelly the interests of Government would be compromised by such a measure, if a proprietor likes to assign away all his rents to his cultivator, let him do so; it will perpetuate poverty, or cause insolvency, but directly that sale, farm, transfer, or kham management supervenes, and the Collector re-adjusts all rents to suit the time, and ascertains *actual resources*. At Banda, I had to deal with a hundred kham villages, and learnt what a land owner can *legally* do. Imagine a great Bhyachara village suddenly becoming kham: no rent rates were known, as each Putteedar paid his quota of revenue; but I had their lands measured, and served notice of their rent, inviting them to contest my demand by a civil suit. The auction purchaser, the transferee, the farmer and the zemindar have equal rights.

The law is clear on this point.

19.—Does any one doubt the law? let them read para. 134, 135, 136 Directions to Settlement Officers; I will not quote them: the law is Regulation XXX of 1803, and Regulation V of 1812. By one, a civil suit is brought by the land owner to try the right: by the other notices are issued, giving the tenant the opportunity to contest the demand. The Settlement Officer recorded to the best of his power the state of things existing at the time; but he may have been wrong, circumstances may have altered; to fix immutable rates, which in their essence are variable, is as impossible as foolish. For rent being the difference of the productive power of the best and worst land, differs from village to village and time to time. Mr. Duncan failed in discovering it in the Benares province; it has never been found out in England, and it is of no use looking for it in the Punjab, as the ingredients are the price current, the census, the money market, the seasons;

you might as well attempt by an administrative order to regulate the price of consols and Bank stock, or fix a maximum to the tariff of comestibles in the market. To fix rents immutably would destroy the elasticity of property, and prevent statistics of *real* rent rates ever being formed to assist us in our future settlements of the Government revenue.

Mr. Thomason also supports this view.

20.—Hear what Mr. Thomason says in his lately published Despatches, it sounds like a voice from the dead. In his Directions to Settlement Officers he is guarded; he uses the following words in regard to the rates of rent "reasonable" para. 108, "fair" para. 117, "equit able" para. 130, 132 and 136, "established" para. 134, "certain" para. 128, "fixed" paras. 112—128, But in his Despatch on the rights of under tenants in Jounpore (page 476) he demolishes his antagonists, and argues both on the law and the principle. Hereditary tenants have a right of occupancy, only so long as a certain rent or a *rent determinable on certain principles* according *to local rates or usages* be paid. Regulations XXVIII 1803; "again, the desideratum is an equitable mode of assessment. The Regulations especially declare all disputes regarding rates cognizable by the Zillah (Civil) Court, and in Regulation V of 1812 a course is prescribed, according to which the demand is to be made wherever a higher rate is assumed than has formerly been paid"; again, "the verdict of an impartial punchayet is the best mode of deciding such disputes."

He declares that it would be unjust to fix rates in perpetuity.

21.—But, as Mr. Thomason further writes, "the question may be treated on a wider basis than mere law or regulation. Supposing the rights of the first class of under-tenants (the 1st class of tenants in my Code) to be adequately protected, would it be just and politic to declare any non-proprietary tenants entitled to cultivate the lands they occupy at rates fixed in perpetuity? The Lieutenant Governor is strongly of opinion, *that such a measure would be unjust and impolitic*. It would be unjust, because it would give to persons who are *not* full proprietors of the land, a privilege they have never hitherto possessed. It would be impolitic, because it would lessen the beneficiary interest in the soil possessed by the full proprietor, and would vest the power in an occupant who could not turn it to the best account from his inability to transfer it."

We should not follow the Sikhs in their disregard for proprietary right.

22.—It is not just, because the Sikhs reduced all proprietors and cultivators to one dead level without semblance of law, that we should, with pretence of law, stereotype the state of things: it is one thing to say that proprietary rights are extinct, and to make all cultivators proprietors, and another to say, that those who are proprietors, should enjoy nothing worth calling *property*. It is a positive danger to our revenue, for the whole estate is supposed to be hypothecated for the revenue, but only a portion is in possession of the contracting parties. The Civil Courts of the N. W. Provinces had no revenue knowledge, and could not use a punchayut: but the issues of this sort in the Punjab will be tried by skilled Revenue Officers with the aid of assessors and the advice of Tehsildars. I trust that I have established my second position; if I mistake not, the agricultural advancement of the Punjab depends on the mode in which we handle this subject.

Refers to different positions of his proposed code.

23.—Position III has been ruled by Mr. McLeod. Position IV is supported by the practice of the North Western Provinces, but I have added a mode of extinguishing the right of an insolvent hereditary cultivator, whose rights are not transfer-

able. Position V shows how conversion from grain to kind can take place ; this sudden abolition of grain rents has been a mistake. We are returning to them on the best managed estates in England. Our Settlement must break down, if we throw in such harsh subsidiary rules, and march too far ahead of the circumstances of the country.

24.—Position V is partially ruled by Mr. McLeod, but I wish to see it absolutely affirmed : thirty years' occupation under our rule where a man is maintained in his rights, go for less in real value as a test of rights than twelve under the Sikhs where every right was in jeopardy. *No customary rights can be created under a system of record.*

25.—I invite particular attention to Position VII. We have placed the sale of the sale of land under restriction. We must do something to make improvement possible; at present, all parties are at arms' length with each other.

26.—Positions VIII, IX, X, XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXIII, are either supported by authority or will be agreed to on their merits. There remains Position XXII, which, adopting the copy-hold law of England, provides for the absorption or expansion of the tenant right according as money is paid or received.

Tenants at will.

27.—I now proceed to the tenants at will: I here find myself involved in a new controversy. My idea is that a "tenant at will" is what a literal interpretation of the words used, show him to be. If there is any mistake in the record of rights, and he has rights of occupancy or a written lease let it be corrected, but if he is in very deed a tenant at will, let him be treated as such. There is no law that can keep him in possession, and however respectable the quarter, by which adverse opinions are propounded, I cannot yield to them. We may depend on this, that it will be long ere in the Punjab the land owner will ill-use his tenant. The depressed prospects of the land owner, the vast amount of uncultivated but culturable area, the demand for labour in public works, has raised the importance of the tenant.

Tenant on written leases.

28.—The "tenant on written leases" has to be created by our system. It is unnecessary to discuss a status which confessedly scarcely exists, but for which provision must be made. Sale of land is an evil politically, and as such we are right to restrict it as regards private parties making use of our courts for the purpose, and forbid it where it has to be enforced for Government demand ; but sale is a natural incident of property. All restrictions upon the owner's free will to do what he likes with his own are contrary to sound principles of political economy, and are injurious to the value of that property. In our exceptional position, as an alien Government in India in the face of the events of 1857, we are justified in our measures, for we are dealing with an ignorant people, scarcely yet fully awake to the value of their newly-acquired rights.

The utmost importance of a system of a tenant leases.

29.—But every interference with the laws which underlie the edifice of human affairs brings with it its own retaliating disturbance. We arrest the sale of land and we thereby stop the influx of capital on land, we keep in possession of our revenue-paying acres, parties who are confessedly unfit for their duties (for property has duties as well as profits), and who would ordinarily have been swept out of sight. As entailed estates, and capitular estates in England, so here, we must

seek a remedy, partial though it must be, in leases, by which the interests of both parties will be advanced. In a country where revenue is paid as much from water as land, where, if the well falls in, the area is abandoned, a system of tenant leases is of the utmost importance. The terms can be left to the parties; what is required is the admission of the principle, and the promise of the guarantee.

Discussion most desirable on the subject.

30.—In conclusion, I beg to state that, though confident in the principle of some of my positions, I am quite open to argument and reconsideration on others. I wish to see the matter ventilated. I think that a publication of the enclosures of this letter, and the letter itself, with the views of His Honor expressed upon the points therein discussed, would throw light on a very obscure, and imperfectly understood subject. I take the liberty of suggesting that the papers be printed, and the opinions of all officers, European and Native, be collated.

I have, &c.,

ROBERT CUST,

Offg. Finl. Commr. for the Punjab.

CODE OF PROPRIETOR'S AND TENANT'S RIGHTS.

The Land owner.

The owner of the village is the party so recorded at Settlement, called Malik, Putteedar, Zemindar or Biswardar; if the owners are numerous, they are represented by their headmen, Mukudum, Suddur Malgoozars, or Lumberdars. The owner of the land cannot be disturbed in his possession unless (1) under the formality of a Government procedure for balances of revenue, (2) or a regular action in the Revenue Court, (3) or a decree of a Revenue or Civil Court. He enjoys all manorial rights, Julkur, Phulkur, Bunkur, Purjaout, Choongee, Dhurut, Huq-utrafee, Khurghee. The koora, or refuse of the houses of non-agricultural residents, belongs to the village land owner, and may be used as manure. He may cultivate land if he choose, but that is not an essential feature of his tenure; he may reside in the village, or elsewhere: he is eligible to the post of Lumberdar, but that office by no means alters his proprietary rights. He must collect his rent from his tenants in one item of demand; abwab and cesses are forbidden. He must give some kind of receipt to his tenants on demand, and can be compelled to do so by a summary suit. He possesses the inherent right to distrain the crops of any of his tenants, and the tenant possesses the counter-right of bringing a summary suit of replevin. He can sue the tenant for balances of rent in the Summary Court within one agricultural year, or file a Regular Revenue Suit for the same within three years from the date of the demand falling due. He can be sued by the tenant for exaction and ouster, summarily within one year from date of injury. He has a right to demand his rent, when paid in kind, as soon as the crop is cut, and in cash one month before the revenue instalments fall due. He cannot demand rent in anticipation, nor will the plea of any such payment in anticipation be recognized by the Courts: he can sell, give, or mortgage his land in accordance with the conditions of the management paper: he cannot sub-lease his lands, but if unable to manage his land himself he may request the Deputy Commissioner, with the sanction of the Commissioner, to grant a farm; he may appoint a manager to act and answer for him. At Settlement he has the preferential right of the lease of his estate, he can refuse, and is then entitled to malikaneh from the farmer, or government. He has the right of pre-emption of the rights of the sub-proprietors, whose status is described below.

Sub-proprietors.

In some villages there exists a class of land owners, who enjoy restricted rights and are called "Malik durjeh doum" "Kisanankudeem," "Malik makboozuh," they are actual owners *of their own cultivated fields*, with power of transfer by sale, gift, or mortgage, but they have no claim to manorial right, or the common land, or to pre-emption, and only in exceptional cases to election to the post of Lumberdar. In this class we find :—

I.—Descendants on the female side from the original locators of the village, and received a small plot of land as a marriage portion.

II.—Descendants of those who assisted in the location of the village, but, not being of the same caste or tribe as the locators, were not admitted to be village land owners.

III.—Hereditary cultivators, who by lapse of time have freed themselves absolutely, and for ever from paying malikaneh.

IV.—Owners of lapsed maafee plots, who have received the indulgence of a lease on *fixed* terms.

V.—Purchasers of plots of land for houses gardens, &c., &c.

VI.—Purchasers of waste land in Kangra valley or elsewhere.

VII.—Hereditary cultivators, who by private purchase or auction sale have converted their occupancy into proprietorship.

VIII.—Other parties who have purchased heritable and transferable rights in the village without becoming members of the proprietary community.

IX.—Lessees of waste ownerless land in Mooltan Division to whom grants have been given under Circular 40 of 1850.

This class can locate cultivators, but, if they should themselves fall into arrear, the village Lumberdar can institute a summary suit, and at once attach the holding, and collect from the cultivators, and, as this intermediate tenure is a transferable and heritable property, he can bring it to sale by a summary decree, and there will be no hesitation in selling it on the part of the Government authorities, as the same political reasons which restrain the ejectment of the land owners of villages, do not apply to them.

Every other party must be a tenant of some kind or other.

Tenants are ordinarily of four (4) kinds.

Tenants.

A.—Tenants on fixed and immutable rates for time of settlement.

B.—Tenants with right of occupancy on rates certain both in amount and nature, and susceptible of legal fixation.

C.—Tenants at will.

D.—Tenants on written lease.

The question of residence as regards all tenants is quite independent of tenure. Of the 4 kinds, A. and B. are ordinarily heritable and possibly transferable. C. is neither : the tenure of D. is tied up in the four corners of the lease, or explained by the custom of the neighbourhood.

The Settlement Record is presumed to describe the status of each class of tenants rightly : a misdescription must be corrected in the manner laid down in Book Circular 33 of 1860. Parties may not only be at the same time tenants of all four kinds for *different* lands, but they may be tenants of two kinds for the *same* land; a tenant with right of occupancy may have taken a lease, but a lease is by nature terminable, the other status is in its essence continuous by prescription, both exist independently of each other. The rights and liabilities of tenants are described with more or less accuracy in the management paper (wajib-ul-urz) of the Settlement Record.

Tenant at fixed rates.

Tenants of this class hold from the village land owners some portion of a village on condition of paying annually a fixed sum or a fixed rate, on it. This may have arisen from the acts of the land owners themselves, or by an arrangement of the officers of Government.

The amount is fixed at time of Settlement, and they are bound to pay, whether they cultivate or not. Their tenure is transferable and heritable, but *terminable:* each case must be decided on its own merits, but on the occurrence of a balance the Lumberdar can file a summary suit, and then at once attach as an intermediate tenure, and collect the rent from the cultivators, and after a decree he can *cancel the tenure.* In this class we find :—

I.—Non-proprietary lessees of lapsed or resumed maafee plots.

II.—Occupiers of land for houses and gardens (without lease) in Civil lines.

III.—Non-agricultural occupiers of gardens, planted before Settlement, and paying by prescription a definite sum, and possessing right to plant, cut, and do what they like.

IV.—Lessees of waste land, the property of others, to whom leases are granted, under Circular 40 of 1853, in the Multan Division. This class is known as "Mukarrureedars," "Bill Muktahdars," "Istimrardars."

Tenant with right of occupancy.

Tenant with right of occupancy is also called "hereditary cultivator." "Asamee Mourusee," or Mustakhilee. The features of this status, which has been created by our system, is that :—

I.—He cannot be capriciously ejected, just because the owner wants the land for himself or other, unless he is in balance. In any other case than as above supposed, he can only be ousted by the issue of a Regular Revenue Suit.

II.—His rate of rent is that of the Pergunah for that description of soil, varying with the prosperity of the neighbourhood, and is ordinarily fixed for term of settlement, and can only be raised beyond that stated at Settlement by a decree in a Regular Revenue Suit, which decree can only be enforced at the beginning of an agricultural year : or a formal notice must be served by the land owner on the tenant at season of cultivation, on or before the month of Jeth, notifying the specific rent under the land owner's right of enhancing it, this will give the tenant at once the opportunity of disputing the demand by a Regular Revenue Suit. The rent may either be in the form of a money rate per acre, or other local measurement, assessed on the capacity of the soil, or a percentage over and above the quota of the Government revenue. In the one case the tenant is said to pay begheree and in the other malikaneh. The right to levy rent in one or other of these forms is inherent in the relation betwixt tenant and proprietor, just as much as the mention of the term servant implies the receipt of wages in one form or another. Although the Settlement Officer may have allowed tenants to pay a quotum of revenue, and have recorded no malikaneh present or prospective, the land owner can bring a Regular Revenue Suit, during the period of Settlement, to try that point, and where an inadequate rent has been recorded he may sue to enhance it, or by issuing a formal notice in the way above described compel the tenant to submit or dispute it. When the parties have been confronted, and their status verified, a jury, or Sooltanee Punchayut of agriculturalists, should be convened to try this issue. "Given the right of occupancy of the tenant, is the produce of the land at the present moment such as to warrant the imposition or enhancement of rent." If there are no established rates of the Pergunah, an award should be made according to the rate payable for land of a similar description in the place adjacent. The

law has made provision for securing this right to the proprietors, a fair opportunity been afforded to the tenant for contesting the demand. As a general rule, open to exception in special cases, the proprietor should be held entitled to raise the rent upon the tenants till it reach half as much again as the average Government assessment upon land of the same quality.

III.—He can temporarily sub-let, and associate strangers with himself in the cultivation, and by leaving a friend or relation in charge, can maintain a constructive occupancy, being responsible for the tillage and rent, and keeping his name on the books of the Putwaree. The arrangement must be in no way prejudicial to the land owner, and no period is assigned to the word "temporary."

IV.—The right of "transfer," by sale, gift, or mortgage, may be an incident in his tenure, but, as it is not ordinarily so, he must prove it. Whatever transfers are recognized by the people, will be so by the Government, but if a tenant wishes to exert an acknowledged right he should intimate the same to the land owner, and record the name of the transferee on the Putwaree's papers, if he does not do so his rights by his laches will suffer, and in all cases of transfer, whether for a price or not, the land owner has the preference and pre-emption, and may exert it under the usual law, and when not ordinarily transferable in case of a decree of a Revenue or Civil Court against the tenant, the land owner will have the offer of buying out the right at a value fixed by a Punchayut. Just as the proprietor is able by a summary decree for his own balances to extinguish the tenure, so he should have the opportunity, in the event of his tenant becoming involved to others, of buying it up.

V.—No conversion of rent from kind to cash can take place within term of Settlement without consent of parties, or unless there is special provision in the Settlement Record, or unless there is a decree in a Regular Revenue Suit, and the Court will never grant a conversion from cash to grain: if such a retrograde measure take place at all, it must be by private consent: and a decree will not be granted for conversion from kind to grain, unless the owner show that the tenant has defaulted, or caused waste, or deteriorated the cultivation, and the tenant show that the owner has oppressed by vexatious, untimely, or harsh procedure. Any change must be from the commencement of an agricultural year, and unless disturbing causes are shown, the arrangement at Settlement must be maintained, and when commutation is made, it must be a full and sufficient one, based on the principle, that two seers in the maund on the gross produce ordinarily equal twenty-five per cent. on the Government assessment in addition to village expenses: and if the custom of Buttai or Kunkoot has to be replaced by money rates, the conversion should be made with the assistance of a Sooltanee Punchayut. No general order must ever be given for converting grain rents into cash: it must be left to the parties, and it must be remembered, that there is a great difference betwixt fixing a *Cash rent* on the capacity of the soil, and allowing the tenant to pay a quotum of the Government revenue. Cash may be the *mode* of payment, but a quotum of the revenue should not be the ratio.

VI.—No new *prescriptive* rights of this kind are now forming; no length of occupancy by a tenant at will, will convert his tenure to one of the higher grade.

VII.—He may not plant gardens, sink wells, cut canals, plant trees, without the leave of the land owner, but if, in a district under Regular Settlement, the licence be refused, he may file a Regular Revenue Suit against the land owner, claiming permission to improve the land, and distinctly admitting that he has no proprietary rights, that the tenure will not be altered by the improvements, that the land owner has the pre-emptory right, if the land should be in the market. The rent of the land will be governed by the rent of the Pergunah, and not be liable to enhancement in consequence of improvement, even though the tenant should have improved without leave, and in case of enhancement of rent allowed by the Court on account of the increased prosperity of the district, care should be taken, that any increase of production caused by the tenant's capital, be excluded from the calculation. It is very true that a man must not be improved out of his estate, but a tenant, with a right of occupancy has a right to improve; similarly the landowner has a right to improve the land of a tenant with right of occupancy, and demand an enhanced rent in consequence, should the tenant refuse to do so. He is at liberty to make his own terms with the land-owner on the subject of the sinking of wells and other improvements, and any dispute on the subject of these terms will be decided by a Regular Revenue Suit on its own merits.

VIII.—His right to collect dry wood and dry grass and reeds for his own use is prescriptive, neither transferable, nor defined in quantity or time: no territorial, or fixed assingnment can be made by order of Court in lieu of the general right, which is by permission of the owner, and if churlisbly refused, the right will be enforced in a Regular Revenue Suit. He is entitled to the use of the koora or refuse of his own house, but has no claims to the koora of the non-agricultural residents nor can he remove the koora beyond the confines of their village without leave of proprietors.

IX.—He has no power to sell his residence in the village without giving the pre-emption to the land owner, and, if abandoned, roofless, and doorless, for one whole agricultural year, the site lapses to the land owners; the materials, unless they are wood grown in the village, may be removed by the tenant. Forfeiture of right of occupancy of the fields does not entail forfeiture of the residence, or threshing floors, or other agricultural conveniences.

X.—Abandonment of tenure for one agricultural year, without provision for tillage, or rent, entails forfeiture of the tenure. Both in this case, and if the tenant default after cultivation the land owner on a summary decree, will be authorized to oust him, and make his own arrangements for the land.

XI.—The land owner has a legal right to attach the crops, if the rent be not paid in due time, but vexatious attachments will always be punished.

XII.—The tenure descends to all direct heirs, but not to collaterals, who cannot trace to a common ancestor who confessedly held the land: it does not ordinarily pass to females, but widows may claim it, and minors may hold through a manager.

XIII.—The tenure extends to certain fields only, which are so recorded, not to any fields which he may choose to cultivate a change of holdings may be the case sometimes, but, as it is not so ordinarily, it must be proved.

XIV.—Arable land cannot be used for other than ordinary agricultural purposes, consistent with good farming; tanneries, brick kilns, saltpetre pans, kunkur pits, must not be started without leave of land owner, nor can the tenant sue *under Position VII* for such permissions, such not being the ordinary use of the soil.

XV.—He has a right to cut trees of spontaneous growth, or planted with leave of land owner by himself for agricultural purposes, such as his ploughs, well gear, roof beams, but for no other purpose, unless he can prove that he has the exceptional right of general use, but he cannot cut fruit bearing, or other trees, the property of the land owner; if the trees are on the boundaries of fields the local custom must be followed.

XVI.—If owing to the increase of trees (not his own) on his fields the productive power be diminished, and the owner of the trees refuse to cut, or trim, or the land owner refuse to decrease rent, the tenant must file a Regular Revenue Suit to compel him to do so.

XVII.—All tenants, whether resident or non-resident, have a right to graze agricultural cattle but not pastoral, on the common land, and water them from the common tanks.

XVIII.—If the rent is paid in kind, and the tenant wilfully cultivate inferior crops, the land owner will be entitled to a decree on an average crop.

XIX.—Leave cannot be refused by a tenant, or to a tenant, to conduct a water-course through fields, but no property is thereby conveyed, it is but a servitude and must be paid for.

XX.—A land owner, whose land is sold for its own balances, or transferred for balances to a solvent Puttidar, or farmed to a stranger becomes, as regard his cultivation, a tenant with right of occupation, permanently, or temporarily, as the case may be, and his rent should be fixed by the Deputy Commissioner with the aid of a jury. A land-owner whose rights and interests are sold in lands, not in balance for the balance of other lands, or by a decree of a Revenue, or Civil Court, loses everything, and his right of cultivation is extinguished.

XXI.—The tenure may be created by the sale of cultivatory right under a decree of Civil or Revenue Court, reserving a rent to the land owner.

XXII.—Tenants with right of occupancy may, by auction sale, private purchase, or gift, convert their rights of occupancy into property, and they will then be transferred to the second class of proprietors. The tenant with right of occupancy, has the right of pre-emption of the land, which he occupies, next after the co-parceners. In the same manner, he has the right of pre-emption to any land in the villages next in order after the co-parceners. Encouragement should be given to this mode of disposing of the tenure: a tenant may accept a sum of money from the land owner, and resign his right, or pay a sum of money and make himself a land owner of the second class.

XXIII.—If the fields recorded at Settlement as the cultivation of a tenant with right of occupancy are washed away by the action of the river, and

new deposits *not susceptible of recognition* are subsequently thrown up, the tenant has no claim, his rights have expired.

It is not attempted to define what constitutes, and what does not constitute an hereditary tenant: it is presumed that the Settlement Officer has done so, more or less correctly. Still less is it presumed to lay down what the proportion of the rent should be to the Revenue, the two calculations have no common number, the Government has made its terms with the land owners, it is their affair to arrange with their tenants, and if we wish hereafter to know the real value of the estate, we should allow rent rates to adjust themselves. Likewise the mode of the rent, whether cash or kind, is quite discretionary.

Tenant at Will.

The tenant at will holds from the commencement of the agricultural year such amount of land on such rates as have been orally fixed between the parties, or are usual for the land. It is possible that he may be a tenant for one harvest only, and his interests will be confined to the period of that harvest only.

The features of his status are :—

I.—He cannot be ejected unless he defaults, and when he has cut and removed his crop he is no longer in possession.

II.—His crops can be attached for the rent, and after a summary decree, he can be at once ejected; if he does not arrange for payment of his rent.

III.—His rent may be in kind or cash, according to custom, or parole agreement.

IV.—He has no right of dry wood or grass but with express licence of the owner, but he has a right to graze and water his agricultural cattle.

V.—If at the commencement of an agricultural year he without leave takes possession of the fields formerly cultivated by him, or any other fields, and refuse to quit them, he can only be ejected by a Regular Revenue Suit, but he will be cast in costs and damages.

VI.—His tenure is neither heritable, transferable nor can it be sub-leased; he may associate another with himslf, but the party will have no rights, or responsibilities recognized by law.

VII.—He has no right to cut trees for any purpose under any pretence, without leave of owner.

VIII.—If he makes improvements, it is at his own risk without any claim on the land owner.

As Mr. Thomason remarks in para. 126 of Directions to Settlement Officers, the best security of tenants consists in the demand for their labour. A zemimdar reckons his wealth by the number of his asamees, and the fear of losing them is often sufficient provision against harshness. Where land is abundant and labour scarce, the tenant can always, as in Mooltan Division, make his own terms with the land owner, who must either accede to the demand, or leave the land untilled. All that a tenant at will can have a right to is :—

I.—That his contract implied customary, be kept to.

II.—That if he improve *with permission*, he be allowed for unexhausted improvements.

III.—That he be only ejected at the close of an agricultural year, if not defaulter.

IV.—That no enhancement, or variation in the mode of demand be made without warning.

The question of his ejection at the end of the year is not discretionary, but absolute at the request of the land owner : he has no right or the term of his own life, or for his heirs nor can the Deputy Commissioner, or his subordinates, make any exceptions so long as his states of "tenant at will" is admitted or proved : all that can be said for the most favored tenant at will is, that he should not be ejected merely to make room for *another* tenant at will, but if the land owner persists in so doing, the law will support him.

Tenants on written leases.

It is to be hoped that, in an improved state of relations betwixt land owner and tenant, pottas and kabuliyats, viz. leases and agreements, may be more largely used. The tenant on a written lease can have no rights beyond that lease, unless he occupies a double status, and is also a tenant with right of occupancy. Violation of terms of leases may justify ouster. No lease can hold good beyond term of the settlement of Revenue of the District, if a longer period is entered, it holds good so long. A tenant can always resign his lease at a period of the year when the land-owner will not be prejudiced thereby. To facilitate leases, written forms of agreement, carefully worded to suit particular requirements, should be circulated to Tuhseeldars, and in districts like the Mooltan Division and the Churkaree Muhal of Sialkote, and Goojranwala, where capital is wanted, but land is plentiful, and land owners poor, timorous and jealous, these leases should be encouraged. A class of Chukdar tenants, with guaranteed sub-leases paying a malikaneh, open after fixed terms to revision, would help the introduction of the monied classes into villages in a legitimate way. The policy of discouraging sales to strangers, is a boon to the hereditary land owner, but it will cause a dearth of capital to the land, if the principle be allowed to go on too long, and be pressed too far.

In closing the subject it is remarked, that the first duty of the investigating Officer is to ascertain clearly, in what capacity the plaintiff sues, and in what capacity the defendant replies; lax phraseology induces uncertain decisions. A party comes into court, describing himself as occupying the status of a Jageerdar, or a proprietor, but the case which he urges is perhaps a tenant right, or a mortgage claim. *He* understands his case, and it never occurs to his untutored mind to explain the difficulty. If the investigating Officer neglects this point also, nothing but confusion can follow.

ROBERT CUST,

Offg. Financial Commissioner.

LAND-LORD AND TENANT INQUIRY.

(REVISED SETTLEMENT)

AMRITSUR DIVISION

PANJAB.

1863–64–65.

PART I.

Report of the Proceedings of Tenant Committee convened at Lahore on the 7th and 9th January 1865:—

With following annexures received from Mr. E. A. Prinsep, Settlement Commissioner:—

Appendix	I	Appendix	VI
"	II	"	VII
"	III	"	VIII
"	IV	"	IX
"	V	"	X

Copy of letter from A. A. Roberts, Esquire, C. B., *Judicial Commissioner, and President of Committee, No.* 1179, *dated* 5*th May* 1865, *to Financial Commissioner.*

With reference to your predecessor's letter No. 3736, dated 7th November last and its enclosures, regarding the formation of a Committee for the purpose of reporting upon the subject of hereditary tenants; I have the honor to submit a report of the proceedings of the Committee, drawn up by Mr. Lepel Griffin who acted as our Secretary.

2. The subject, as laid before us by Mr. Prinsep, the Commissioner of Settlements in the Umritsur Division, appeared to resolve itself into two main propositions, to the consideration of which the Committee addressed itself, at the only two meetings that we were able to hold.

I. The power of an Officer revising a Settlement to alter the record of rights of a previous Settlement.

II. The necessity for any general amendment in accordance with a code of rules dividing tenants into certain great classes, and showing the rights and usages prevailing, which had been drawn up by Mr. Prinsep for his own guidance, and that of his subordinates, in determining the status of tenants.

3. On the first point, the Committee decided that the record of rights might be amended with the consent of both parties; but that it was unnecessary and unwise to re-open every case; and that a regular suit should be brought in disputed cases. On the second point, the Committee did not consider Mr. Prinsep's classification of tenants sufficient to include every variety of tenure, or think it possible to lay down any rule or principle, further than that each case should be decided upon its merits.

4. As regards the first proposition, I would beg your attention to para. 6 of the Circular order of the Saddur Dewanee Adalat, North Western Provinces, dated 31st July 1845 (Appendix XIX "Directions for Settlement Officers"), wherein it is laid down that "the whole tenor of Regulation VII of 1822 invests officers conducting Settlements with authority to correct the errors of former Settlements;" and it appears to me that the instructions of the Saddur Board of Revenue drawn up in 1855 for the revision of Settlement in the Saharunpoor District, which was the first of the 30 years' Settlement of the North Western Provinces which expired, were based upon the principle of correcting errors (see rules XXI, XXIV, and XXVI in particular; Appendix XX of "Directions for Settlement Officers").

5. There can be no doubt, therefore, of the competency of the Settlement Commissioner to correct the former records: but on reflection, I do not think the decision of the Committee, that in disputed cases no amendment of the previous record should be made without a regular suit, is correct. I opine that, if an entry is disputed the Settlement Officer should proceed as laid down in paras. 13 and 80 of "Directions for Settlement Officers," and should have recourse either to private arbitration or to assessors, leaving it to the party, who may be dissatisfied with his decision so arrived at, to bring a regular suit. But I do not consider that the procedure heretofore adopted by Mr. Prinsep, of a Punchayat for a whole village, is sufficient. In each case either party should have the option of challenging the assessors.

6. I also cannot think that Mr. Prinsep's code purporting to define all possible relations between Landlord and Tenant is sufficient to embrace the great variety of interests which prevail in the Umritsur Division, as elsewhere. The features are so varied, and often so minute, that it would be impossible without the risk of great injustice to lay down general rules or enunciate abstract principles.

7. Sixteen years ago there was neither landlord nor tenant in the Punjab according to our acceptation of those terms; but there were numerous co-existing interests in the soil. Unquestionably numerous mistakes occurred at the first Settlement in recording those interests, and we should take advantage of the revision of Settlement for perfecting the record; but the less recourse we have to general rules and principles, or to authoritative decisions; and the more we encourage the people to adjust and to define their own rights, the better.

8. With reference to the last para. of Mr. McLeod's letter to me, pointing out the analogy between copy-holders in England and hereditary tenants in India, and suggesting that the Committee should consider the question of facilitating and encouraging the absorption of hereditary tenures in the same way as copy-holds are enfranchised, I regret to say that time did not permit of our entering upon this subject.

9. The whole of the correspondence which was received from your office is herewith returned. A letter from Mr. Prinsep and its enclosures also accompanies.

REPORT OF LAHORE COMMITTEE OF 1865.

Copy of report of L. Griffin, Esquire, Secretary to Tenant Right Committee to A. A. Roberts, Esquire, President of the same, dated 31*st March* 1865.

Submission of Report.

I have the honor to submit the report of the proceedings of the Committee appointed to consider the question of Tenant Right in the Punjab.

Owing to the absence of yourself and the Settlement Commissioner, Mr. Edward Prinsep, in camp, the papers connected with the subject only reached me on the 13th of the present month, and hence some delay has arisen in the submission of the report.

I would also beg to observe that, as each proposition before the Committee was discussed in a general and conversational manner, it was found impracticable to take exact notes of the proceedings. This will account for the form of the report.

The formation of the Committee.

2. The Committee met on the 7th and 9th of January 1865, and was composed of the following officers:—

PRESIDENT.

A. A. Roberts, Esquire, C. B., Judicial Commissioner.

Members.

Colonel E. Lake, Financial Commissioner.

P. S. Melvill, Esquire, Commissioner Umritsur.

Major Cracroft, Officiating Commissioner Jallundur.

A. Brandreth, Esquire, Deputy Commissioner Goojranwalla.

W. Blyth, Esquire, Deputy Commissioner Gogaira.

Syad Hussain Khan, Extra Assistant Commissioner Goojrat.

Moonshi Amin Chund, Extra Assistant Commissioner of Settlement.

" Hookm Chund, Extra Assistant Commissioner of Rawulpindi.

The order of Government with regard to its duties.

3. The proceedings were commenced by the President reading the letter of the late Financial Commissioner to the Secretary to Government Punjab, No. 517 of 14th October 1864, another letter of the Secretary to Government No. 987 of 26th October 1864 to address of Financial Commissioner: the former letter suggesting the expediency of the formation of a Committee to consider the question of tenant right, and to decide on propositions to be laid before it by Mr. E. A. Prinsep, Commissioner of Settlements, and the latter concurring in the expediency of such a Committee, and directing its formation.

Documents submitted by Settlement Commissioner.

4. Mr. Prinsep was then desired to state his opinions with regard to tenant right, and explain the method by which he had arrived at his conclusions. He first obtained permission to submit to the Committee the following papers:—

Appendix I. Letter of Settlement Commissioner No. 196, dated 28th April 1863 to address of Financial Commissioner requesting instructions.

" II. Financial Commissioner's Circular No. 69, dated 21st August 1863, asking opinion of District Officers, with a resumé of the proceedings.

" III. Opinions recorded by the Committee held at Battala, 20th May 1863.

" IV. Do. Do. Do. Amritsar, 14th June 1863.

" V. Do. of selected Native Revenue Officers.

" VI. Do. of Native Gentlemen.

" VII. Extract from Settlement Reports of 14 districts.

" VIII. Correspondence in 1855 between Messrs. Thornton and McLeod.

Appendix IX. Schedule of General customs with their exceptions, relating to different classes of tenants proposed by the Settlement Commissioner as the basis for a new Tenant Code for the Amritsur division.

" X. Statistical Report of Tenant enquiries instituted during the present revision of Settlement in 10,000 holdings in 7 pergunahs of the Amritsur division, to illustrate the extent and gravity of the mistakes made at that settlement.

His reasons for believing the system of recording tenants as "having a right of occupancy" to have been fallacious.

5. Mr. Prinsep stated that the above papers contained all the accumulated facts, from a most careful consideration of which he had come to the conclusion, that the old system of recording tenants as "*having a right of occupancy*" was fallacious; that at the last settlement there had been little enquiry into the mutual relations of proprietor and tenant, and that local custom had been entirely overlooked, causing great mistakes and grave injustice. Mr. Prinsep further stated that when he began the settlement constant complaints of these mistakes were made to him. In the 3 districts of Amritsur, Sialkote and Goordaspore, deputations of proprietors waited upon him pointing out the errors which had been made at the last settlement, and praying for their rectification in the new one. They urged that the very tenants whom they had full power to evict from their holdings in former days had by the action of Government been entered "Mauroosi" (hereditary), and were protected from all ejectment; and that these entries were opposed to the usage of the country and were destructive of their own proprietary rights. These representations were so general, that Mr. Prinsep addressed Government so far back as 1863, suggesting the advisability of an exact enquiry into the recorded tenures, and showing in what manner errors could be best detected. Enquiries were instituted, and the result reported to Government.

The letter containing these suggestions was then read to the Committee by Mr. Prinsep.

The issues drawn for discussion.

6. The President thought it well before further discussion to define the issues which were to be considered by the Committee, and to take up each in its proper order. This Mr. Prinsep was prepared to do, and begged the President to record the general question thus :—"Has any case been made out" for re-opening the question of the status of tenants recorded as having a right "of *permanent occupancy* at the last settlement?" He also proposed to consider the question as regarded :—

I. *The facts* establishing the necessity for amending the record.

II. *The Law* giving power to undo a former settlement.

III. *The policy* or the expediency of so doing.

Mr. Melvill urged that it would be best to take up first the question of *the Law*, as, if Mr. Prinsep's proceedings were proved illegal, it would be unnecessary to go into the questions of facts or policy.

It was accordingly agreed to consider the question of *law* first, though the President and Colonel Lake observed that the legal question was but a secondary one; that the Committee was in any case bound to consider the

necessity and *expediency* of amending the record of rights; for if *these* should be proved, the Government had the power to legalize retrospectively all that had been done, and lay down precise rules for future guidance.

7. *The Law.* Mr. Prinsep then stated that under Regulation VII of 1822, he considered himself empowered to take up all questions relating to "Tenures, Rights, and Occupancy in land, Rent and the produce of land," amending the record when any error was detected; that he was bound to record facts as they were (or as they appeared to him), leaving parties who denied the entries to prove their error by a regular Revenue Suit. In the experimental enquiries he had conducted, the land-lords and tenants were confronted, and when it was proved by a mixed jury, representing both interests, that local usage had been unheeded, or subordinate and mutual relations overlooked, the record was amended and the party questioning the amendment was referred to a regular suit. He contended that he could decide questions of disputed right in this manner up to 12 years, and as only 10 years had elapsed since the last settlement, he could amend all detected errors, and define the true relations of all parties within the provisions of the law.

The law giving power to undo a former Settlement. Reg. VII of 1822.

8 Mr. Melvill was of opinion that the Commissioner had no power under Regulation VII of 1822, and contended that, granting him the power of that Regulation, it only allowed revision of *assessments*, and not revision and amendment of the *Record of Rights*, which was in the intention of Government and in the belief of the people an unchangeable record of existing facts.

The signification of *revision* as used in the regulation.

On the other side it was urged that this limitation of the meaning of the word *revision* was never intended. That every term must be accepted in its full and general meaning, unless it should be specially limited or qualified; that the preamble of the Act stated that it is the wish and intention of "Government that in *revising* the existing settlement, the efforts of the Revenue "Officer should be chiefly directed to the objects of *ascertaining, settling*, and "*recording the rights, interests, privileges and properties* of all persons and "classes owning, occupying, managing or cultivating the land;" and that consequently, unless the record of rights was to be amended on the discovery of error, the directions of the Act for "ascertaning, settling and recording the rights" were absolutely meaningless. Again, how was it possible for the Settlement Officer, having discovered a distinct error from his own investigation or from the admission of the parties interested, to make entries which he certainly knew to be incorrect. Yet if the amendment of the record was forbidden, he would be compelled constantly to enter as true and right what he knew to be false and wrong.

9. Mr. Prinsep argued that even should Regulation VII of 1822 confer no power whatever, yet that from the local rules in force he was bound to correct the errors which the facts he had collected proved to exist; that generally there was no enquiry at last settlement; that the parties were not confronted with a view to determine their exact mutual relations, that local custom regarding the different classes was not investigated; that 12 or 20 years' occupancy was accepted as the only test, and that consequently thousands were entered as possessors of rights which they had never exercised, and which custom in no way sanctioned. The way in which errors had arisen

The want of enquiry at the first settlements and the mistakes said to have been committed.

was the following :—At the time of measurement, the Patwari enquired the lenght of occupancy in a loose way, and in accordance with the answer entered "Mauroosi" or "Ghair Mauroosi." That the entry was probably uncontested when the measurement papers were attested, and has remained uncontested to the present day. The term Mauroosi was at the time of the settlement most imperfectly understood, being new and strange; many thought it implied 'Irs' or hereditary right of ownership of a subordinate natuie. In this way many real proprietors who according to the sense of the country could not be tenants of a protected description, allowed themselves to be erroneously entered as "Mauroosi" or hereditary.

Local rulings giving full power to the Settlement Officer to amend the record.

10. The local rulings which were chiefly relied upon to support the argument, that in the absence of Regulation VII the Settlement Officer had full power, and not only power, but explicit instructions to amend the record were :—

I. Chief Commissioner's Letter No. 1010, dated 11th December 1855.

II. Financial Commissioner's Book Circular 33, of 1860.

The letter of the Chief Commissioner was then read and particular attention requested to paras. 2 and 3, where the idea was repudiated that a mere *term of occupancy* was to be taken as a test of RIGHT of occupancy. A new principal was in 1855 laid down, the Government having been made aware of the grave errors which resulted from following a false procedure. The new principal was ;—"that it is the *nature* quite as much as the *length* of occupancy "which entitles a cultivator to privileges ; that a period of 12 years or a rule of "12 per cent had never been authoritatively fixed ; that no rule on the point "could be fixed, for local custom varied ; that it was the business of Settlement "Officers to learn thoroughly the local customs of their respective Districts, and "the opinions of the agriculturists."

Again the Financial Commissioner's letter No. 588, dated 3rd May 1853 to the address of the Commissioner Trans Sutlej States remarks, "the "Chief Commissioner is of opinion and I agree with him, that wherever mis-"takes have been made in recording cultivators as hereditary or non-hereditary, "the record should be carefully revised and amended." Thus the new principle not only enjoined amendment, but directed that it should be made in accordance with local usage.

The authority of "direction to Settlement Officers."

11. Mr. Melvill contended that the directions of the Chief Commissioner were not intended to be in supersession of the "Directions to Settlement Officers," which was still in force. He read para. 159 from the "Directions" regarding the record of right, the most striking portion ,of which is as follows :— "the record of rights is not to answer a temporary end, the record is to be per-"manent, it is to be, as it were, the charter of rights to which all persons "having interest in the land, or seeking to acquire such interest are "to appeal."

Mr. Melvill also referred to Nos. 25 and 26 of the Appendix of 'Directions to Settlement Officers', being the notifications of the Lieutenant Governor North Western Provinces, investing Officers with special powers under Regulation VII of 1822 to revise the Settlement ; and the further directions of the Saddar Board issued subsequent to the notification.

12. Mr. Prinsep stated that he was fully prepared to abide by the "Directions to Settlement Officers" wherever these had not been superseded by later orders of Government, that para. 159 above mentioned treated of an original settlement, not of the revision of one already made, that the record was a *permanent* exposition of rights only so long as the settlement itself was permanent, and that amendment of the record at the time of the revision of settlement was distinctly enjoined. He maintained that the principle laid down in the Chief Commissioner's letter had been acted upon in new settlements in districts north of the Chenab. Parties were to be confronted, the local customs ascertained, and if it was clearly proved that land-lords possessed and exercised the power of eviction, tenants were not to be blindly entered as having a right of permanent occupancy merely from a 12 years' occupancy, or cultivation of the land. Financial Commissioner's Circular 33 of 1860 had since been issued, facilitating still further the rectification of the record, and thus those empowered to conduct revision of settlement had undoubtedly the power to form a new and amended record on these principles.

The "Directions" in force where not superseded by later orders of Governmet.

12½. Mr. Melvill, supported by Major Cracroft and Mr. Brandreth, waiving the question of the power of the Settlement Officer to alter the record of rights, contended, that if any rectification of the record was to be made, it could only be made on the principles recognized and followed in the original settlement. That allowing in individual cases and where there was a glaring error in *fact* the power to amend the record, yet no Settlement Officer could refuse to recognize the status of large classes of men, which had been admitted in the original settlement, *i. e.*, certain classes of tenants had been recorded as "protected," "hereditary", and their hereditary right of cultivation could not now be generally denied.

The principles of the original settlement should be maintained.

13. Mr. Prinsep enquired what the "*old principle*" really was. He stated that the great difficulty of a Settlement Officer arose from the absence of any principle at all in the old settlements: that there was no fixed principle, he was prepared to show from the extracts from settlement reports submitted; that on the contrary each Officer made and carried out a principle of his own, and that even the term of prescriptive occupancy was capricious in the extreme. In Jalandhur, 20 years' occupancy was introduced as the test for outsiders. In Googaira even 8 years, short even of statute, was adopted. In Ferozepoor the Settlement Officer allowed certain classes of occupants under 12 years to be treated as 'hereditary,' while in Rawulpindi and Jhelum, the settlements commenced *after* the Chief Commissioner's enunciation of the principle which was to determine tenant rights in 1855. 12, 20 and even 30 years varying terms were introduced, which were counted from annexation, giving thus terms of 18, 26, and 36 years. In the older settlements the principle adopted was altogether different. Here the 12 years' term was generally adopted, but still this cannot be now accepted, if the definition of the 'old principle' is to be still followed; as the Chief Commissioner had himself rejected it and enjoined enquiry into local custom and mutual relation of land-lord and tenants. No one could define what the 'old principle' really was, the Local Government laid down the new principle above quoted, which he (Mr. Prinsep) had endeavoured to carry out.

These were difficult to determine as they varied in each district.

14. Mr. Melvill denied that the 'old principle' was unknown or even obscure: many cases had been contested by regular suit in the Courts, and the decisions in these contested cases might serve as precedents, and would certainly show what the principle was which had been ordinarily followed.

The contested cases to serve as precedents.

Mr. Prinsep replied that the contested cases were comparatively few in number, there being only 500 in 10,000 holdings enquired into, and even if these decisions were more numerous, it would be unsafe to adopt them as precedents, for in most cases the Judge had accepted as the measure of right to occupy permanently, the *term* during which the tenant had held the land, and in few cases or in none was the true question, the question upon which the whole issue of right of occupancy turned, enquired into :—" *had the land-lord power to evict, and had he exercised this power to evict by taking away or changing fields ?*"

These had been decided on a wrong principle.

Mr. Prinsep supported his argument from the table of results of the enquiry into 10,000 holdings, and by reading by extracts from the reports of Settlement Officers, he pointed out that in some 12 districts south of the Chenab, the old and erroneous principle had been acted upon, while in the newer settlements north of the Chenab, the entries had been recorded on the new principle, the parties had been confronted and custom had been enquired into. Here, in the same province, was the greatest diversity of practice—a diversity which it was most desirable to correct when an opportunity like that of the present revision of settlement occurred.

15. Several members of Committee then contended that even supposing the old principle difficult to determine, yet still it was infinitely less vague then the new principle favored by the Settlement Commissioner. That there was no certain knowledge by which the true position of the so called hereditary tenants could be defined. Mr. Prinsep might be conscientiously convinced that he had decided the question; but another Settlement Officer with opposite views might come, who would discover Mr. Prinsep's procedure to be entirely wrong and himself adopt a different one. When was there to be any stop ?

The new principle of the Settlement Commissioner more vague than the old.

It was replied by Mr. Prinsep that the Committee had been assembled for the purpose of ascertaining the extent and kind of error in the old Settlements, and of framing new principles which might serve as a guide for the future. His own investigations in the Amritsur Division, were made with the object of ascertaining the true principle on which to work, and he placed before the Committee a schedule of Tenant relations based on usages existing in the Amritsur Division.

In the schedule the tenants were divided into certain great classes. The general usages with regard to each class were recorded, and the exceptions to the general usage were then shown, as elicited from the enquiry into 10,000 holdings, and this might be considered as the basis of a Tenant Code for this portion of the Punjab. As new exceptions appeared they might be added or special rulings founded on them might be promulgated, and thus a Tenant Code would be gradually formed on

Proposed Schedule of Tenant relations.

true and intelligent principles. If this were done, the Settlement Officer could never be reproached with having followed his own opinion, there would be a legal and distinct procedure which would, at all events, be advantageous in correcting the old errors in a simple manner, while there would be no occasion to go for precedents to decisions based on individual opinion (rai hakim.)

The custom not general enough for the basis of a code.

16. It was objected that there was no sure ground on which definite principles could be formed. The Settlement Commissioner referred to the prevalence of certain customs and to admitted mutual relations. Colonel Lake and Mr. Melvill were of opinion that no custom could be proved so general in its application, and so firmly established as to have the force of law—that it was impracticable to make custom the basis of a Code, when the custom itself was ever fluctuating from political or economical reasons, and consequently the very principle of the Code would be fluctuating and uncertain.

"Custom" in Sikh days; the value of land, and the relations between land-owner and tenant.

Mr. Prinsep admitted that during a portion of the Sikh rule, the country was so much disturbed that usages and custom were shaken and weakened, but this did not now justify the Government in denying these customs which still had a tangible existence. At the last settlement it was generally held that there was no such thing as property in land; that all alike paid Revenue in kind; that there was no rent taken and little or no difference between the upper and lower classes of cultivators. These opinions were one great cause of the errors which had been committed.

Colonel Lake was of opinion, that, as a general rule, land had no marketable value in the Sikh days, and that property in land had been created by the British rule. The great want in those times was Tenants to cultivate land, and proprietors, using the term for what it was worth, were glad to find Tenants who, in a permanent occupancy, would relieve them of a portion of the Government demand.

Mr. Prinsep argued that all his investigations recorded, and before the committee, went to show that, anterior to British rule, certain dominant classes, of one ancestral stock possessed 'property in land,' and were considered the true 'mâliks,' a proprietary right was found to be universal and was nowhere denied even by the 'protected,' Tenants, who admitted their subordination to some one proprietor, who, during the Sikh regime, had the power to change their fields or evict them altogether. With this established, and the recorded facts spoke for themselves, it was illogical to deny the existence of custom and mutual relations between Land-lord and Tenant. If custom and these proved mutual relations were not to be accepted, why had the chief authority in the Province laid so much stress on the necessity of determining the existing customs and tenures? Why had he referred to *them* as the proper test by which to define Tenant right? If this principle were now negatived what could be said in favor of the settlements which had been conducted north of the Chenab in accordance with the directions of the Chief Commissioner, in accordance with the very principle now denied?

The disturbances occasioned by Sikh rule were not of so much importance as was sometimes supposed. Beneath these disturbances, however severe and universal in their effect, lay tradition and custom, fixed and

unchanging, the existence of which was a mere question of fact, and to be proved by the very evidence now before the Committee. The principle enunciated by the Chief Commissioner in 1855 was in reality no new one. It was the principle recognized by the Supreme Government when it directed the settlement operations to be conducted with equity, common sense, and in accordance with the custom of the country. It was the principle of the "Directions to Settlement Officers," and of all orders on the subject which the Supreme or Local Government had ever issued. The Chief Commissioner reiterated it in his instructions of 1855, because he saw that it was being overlooked by Settlement Officers who were, in its place, adopting a *term of occupancy* test which had no foundation whatever in the custom of the country. If this principle were abandoned, all that had been done would be nullified; Settlement Officers would have been wrong in making out the village 'Administration paper' defining village custom, and some new principle must be sought as a basis for future enquiries.

For these reasons, Mr. Prinsep argued, the law was clearly on his side and his procedure hitherto had been strictly legal.

The opinion of members on the issue of Law.

17. The President then took the opinion of the different members of the Committee on the issue of Law. Colonel Lake and the President were of opinion that the Settlement Officer had full power to take up cases in which he had discovered error. That disputed cases must be decided by a regular suit. Due regard should be paid to entries of the former settlement, and in cases of doubt the former record should be upheld. Major Cracroft considered that a Settlement Officer in a revision of regular Settlement was competent to alter the existing record of rights, where any error was admitted by both parties; but where the parties were not agreed he could not of his own motion alter the record. He should, in that case record a proceeding, refer the party claiming the alteration to a regular suit, throwing the 'onus probandi' upon *him*, hold a complete investigation, and come to a formal decision.

Mr. Melvill agreeing generally with the above, was doubtful whether the suit should not be transferred to the District Court. Mr. Brandreth thought it certainly should be, and if necessary appoint an additional Assistant to decide such cases.

Propositions submitted by Messrs. Brandreth Melvill, Blyth and Major Cracroft.

Messrs. Brandreth, Melvill, Blyth and Major Cracroft, also submitted the following proposition, part of which would perhaps have been more conveniently entered under the 1st issue of facts, and another portion under the 3rd issue of policy.

1st. " It is desirable that a Regulation be obtained to the effect that " uncontested entries of a regular settlement, duly acted upon, will not be set " aside at a revision of that settlement.

2nd. " That cultivators who have held 12 years before the first regular " settlement and who were recorded as hereditary, shall not now be liable to " ejectment.

" I. Because on the evidence of the former status, of the power of the " owners and the position of the cultivators, they are not justly liable to eject- " ment.

"II. Because even if they were it is not politic to introduce so great a "change, as tending to throw doubts on the rights of property, and to make "the country doubtful of the word of the British Government."

The native members of the Committee were of opinion that the Settlement Commissioner had full powers to amend the record, leaving contested cases to the decision of a Regular Suit.

The power to amend the record admitted.

18. The general conclusion of the Committee on this issue was to the effect, that the action of the Settlement Commissioner had been entirely within the law. Thus there was no objection to the amendment of the record, if both parties consented and if a regular suit was allowed in disputed cases; but that it was both unnecessary and unwise to re-open every case.

To the last point Mr. Prinsep urged that without enquiring into each case it was impossible to know the supposed rights of a tenant, who was merely enterd as "Maurusî," which might mean anythiug, as there was no remark in the Khationi defining his right. It was thus necessary, and, indeed, all attestation of settlement adopted the same plan to confront the parties and make an enquiry. The questions and disputes which arise in the course of these enquiries must be determined in a summary way, for the settlement would be impeded for years if each dispute were made the subject of a regular suit. And such a course would probably occasion much ill-feeling; for there is a fear that the proprietor, when armed with a decree, which would probably be given in his favor, would be disposed to evict the tenant who opposed him so pertinaciously.

To prevent this, Mr. Prinsep stated that he had adopted a summary plan, with the aid of assessors which was described in a correspondence with the Commissioners of Amritsur and Jallundur,* the result of which had been that in 10,000 cases enquired into, both parties had a fair hearing; objections had been sifted and the true relations of the parties had been determined and recorded. This Mr. Prinsep considered was sufficient to allow the work of rectification to proceed; while, if parties were still dissatisfied, they were referred to a regular revenue suit.

* No. 595 of 14th September 1864.

The mistakes of the first Settlement.

19. Mr. Prinsep was then called upon to proceed with the second issue, viz., the *fact* that mistakes had been very numerous at the last settlement. Mr. Prinsep, accordingly, referred the Committee to the reports of district officers on the subject of hereditary tenants. These reports, from different parts of the Punjab, were almost unanimous in affirming that previous to the last settlement, the terms "Maurusi" and "Ghair Maurusi" had been unknown, and the class now known as hereditary tenants had no existence, and that proprietors had the power of evicting tenants at their own pleasure.

The general testimony to the creation of the "hereditary cultivator" by the Settlement Officers.

He further referred to the numerous axtracts from some 14 settlement reports before the Committee, from which it would be seen in the clearest way, that while the right of permanent occupancy had in some cases been conferred, such eminent officers as Messrs. Temple, Cust, Egerton, Davies, and Elphinstone asserted of the Districts of Lahore, Amritsur, Jallundur, Goor-

daspoor and Googaira (the very part of the country where revision was now going on) and were united in their testimony, that "the position of an hereditary cultivator having right of permanent occupany had no existence whatever in Sikh times, and was a creation of the last settlement." This opinion Mr. Prinsep stated was most strongly and entirely confirmed by two large committees of proprietors and tenants recorded as hereditary, which he had called together at Amritsur and Battala in 1863. The opinion of influential native gentlemen and of experienced native revenue officials agreed with that of the committees, and was to the effect that before the last settlement, proprietors both possessed and exercised the power of evicting their tenants; that such a class as tenants with a permanent right of occupancy was unknown, that there was at the last settlement little or no enquiry into the relations between landlord and tenant; no enquiry whether the landlord had the power of eviction and exercised it, and the consequence was that, in numberless cases, tenants to whom the idea of right of permanent occupancy had never occurred, were entered hereditary, 'Maurusi,' simply and solely because they cultivated particular fields for a period of 12 years.

The power of eviction, possesed in Sikh days, by the landowner.

20. A long discussion here ensued on the position of the tenant cultivator during the Sikh rule. Colonel Lake was of opinion that the practice was by no means uniform. That the distinction between proprietor and tenant was recognized by the Sikhs there could be no doubt, but that whatever power of eviction might be allowed the proprietors, it was but seldom that he had the power or inclination to exercise it. If the proprietor was powerful and in favor with the authorities he could do much as he liked; while if he was poor the Sikh Kardar would protect the tenant against him. He also stated that the position of many of the proprietors was little better than that of the hereditary tenants, and had been acquired in much the same way.

Mr. Brandreth admitted that hereditary cultivators were a class created by British rule, and that in Sikh days they had no existence. But he argued that the real power was with the Kardars or Jageerdars acting for Government, and that the power of eviction possessed by proprietors was almost always in abeyance; that the tenant cultivator was invariably supported and protected by the Kardar against the proprietor; for from the *cultivators* a large portion of the Government revenue was raised, and it was the interest of the Kardar specially to protect them as they might leave their village altogether, not being, like the proprietors, attached to the soil. He admitted that there were cases in which the proprietors being powerful and independent, exercised the right of eviction. Mr. Melvill said that the difference was one of terms alone. That *Maurusi* and *Ghair Maurusi* might have been invented at last settlement, but that the *fact* which these terms intended to express was of long existence, that so long as the real power was, as in Sikh times, with the Government and with the Kardars the representatives of Government, and the proprietors had not power to evict their tenants against the will of the Kardar, the tenants virtually held their lands in perpetual occupancy.

To this Mr. Pirnsep replied that the facts were strong and clear to the effect that, in that part of the country in which the revision of settlement was going on, proprietors did exercise their right of eviction,—that he had no wish to generalize, and that his arguments referred directly to Amritsur and the neighbouring districts.

21. Mr. Prinsep then asked permission to place before the Committee in detail the facts regarding each tenant class as reduced to record in his schedule, comparing it with the table showing the results of enquiries into 10,000 holdings. In this way the number and gravity of the errors committed would be readily seen.

The results of enquiries into 10,000 holdings.

22. The schedule in question was prepared by Mr. Prinsep for the guidance of Settlement Officers, and showed the relations existing between the Landlord and the principal classes of tenants, the usages prevailing, and the exceptions allowed to oppose the usage in each class.

The schedule of tenant relations, classes of tenants and usages prevailing.

In the schedule the following chief classes were shown with further sub-divisions:—

(A) Shareholders in the village ownership (hissadar) divided into (1) tenants of common holdings belonging to proprietors and (2) tenants of "separate holdings" or one comparcener cultivating for another in a separate holding (Hissa Chuck).

(B) Resident tenants (asami) divided into those of (1) long standing with occupancy inherited from father to son (known as kadimi mulidhi, &c.); (2) ordinary village servants (kamini sepi, &c.)

(C) Relatives of proprietary members being (1) descendants on the female side (Dhotur Nawassa); issue of widow by former marriage (picchlag); (2) other degrees of relationship (sak).

(D) Mortgagees or parties having a money lien (Girwidar Kurzdar.)

(E) Non-resident tenants, ordinary tenants at will living in other villages (paikashtar).

(F) Jageerdars and mafidars assignees of the Government revenue.

(G) Occupants of land connected with religious places as Masjid, Dhurmsala, Takia, &c.

23. With regard to the first class (A) Mr. Prinsep argued that one member of the proprietary community cultivating land of another proprietor, could never claim right of occupancy *as a tenant*, that if any claim is advanced it must be for *proprietary* not for *tenant* right, for no custom allowed him *as a tenant* to occupy the land to the prejudice of the real owner. He took the land on the understanding that when it was required by the owner he should give it up.

Shareholders in the village ownership.

This principle applied to land held in common or in severalty.

Mr. Prinsep read the exceptions which will be seen by a reference to the schedule. Some members thought there might be other exceptions. These Mr. Prinsep denied on the *basis of tenant right*, and the native members entirely agreed with this view.

24. The second and most important class (B) was then considered. Resident tenants—Mr. Prinsep maintained that the general custom allowed the proprietor power of eviction no matter how long the occupancy, provided that the tenant had received the land from the proprietor's *individual* estate, and that it could be shown that the proprietor had been in the habit of changing fields, giving leases, or acting in such a manner as to show his possession of the power of eviction.

Resident tenants.

The exceptions were numerous and important; a tenant would not be made to give up his fields when there were other tenants of the same proprietor entitled to less consideration, nor unless the land was required for the proprietor's personal use.

The native members of the commitee concured in the propriety of the ruling, granting the exceptions, and provision being made for other exceptional cases which might hereafter araise.

Village Servants.

The second divison of this class, viz., "village servants" gave rise to much discussion.

Mr. Prinsep considered that all village servants, such as carpenters, barbers, sweepers, &c., were simply tenants at will, holding their lands on condition of sevrvice and liable to eviction if such service *was not performed*; a few exceptions were allowed in the schedule.

The three native members were entirely in fovor of this principle.

Colonel Lake thought that as in many cases the Kamins, village servants, had occupied their holding from the time the village was founded, it would hardly be right to allow the proprietor the power of evicting them. Mr. Brandreth urged this view of the question very strongly, he considered that the low and degraded condition of the kamins arose entirely from caste prejudices, and the desire on the part of the natives to perpetuate serfdom. It was, he contended, for the British Government to raise the social status of the kamins, and not to compel them to remain in a state of degradation. It was not just that long and uninterrupted occupancy should be counted as nothing because the holder was a menial.

On the other side it was urged that length of occupancy was altogether immaterial, and that the social position of the kamin had nothing to do with the question at issue. What was the question? What was the justice of the case? If the kamin held his land, *simply and solely on the condition of performing certain service*, it was manifestly illogical and unjust to maintain his right of permanent occupancy when he no longer performed such service.

The native members of committee maintained that in Sikh days the occupancy of the class in question was merely *permissive*, and in no way absolute or unconditional.

Relatives of proprietary members.

25. But few cases had come under class C. and the commitee did not dwell upon it at any length. Mr. Prinsep considered that as a general rule the relatives of proprietary members could only hold on a life tenure, or for such time as the terms of the agreement specified.

Parties having a money lien.

26. Only two cases being recorded under classes (D) the committee passed on to the next.

Non-Resident Tenants.

27. Class E. *Non-resident tenants* (paikasht). The general principle (subject to 6 important exceptions) applicable to this class was maintained to be, that such tenants could be, and were evicted, no matter what length their occupancy might be; the presumption being that they received fields from individual proprietors according to the usage mutually understood and accepted by the tenants, that they should only hold from year to year subject to the will of the proprietor.

In this principle the native members agreed, provision being made for the exceptions.

Jagirdars and Maafidars.

28. With regard to class F. Mr. Prinsep maintained that when the jagir or mafi grant lapsed or was resumed, proprietors could generally assume occupancy of the land.

Occupants of lands attached to temples, &c.

29. With regard to lands attached to temples, mosques, shrines, &c., in class G. Mr. Prinsep maintained that, in most cases, the lands were granted on condition of specific performance of certain obligations, so long as these were fulfilled, the proprietor had no right to evict. Neither this class nor class F, last mentioned, were dwelt on by the Committee at any length.

The conclusion arrived at by the committee generally with regard to all the classes whose status was discussed, was to this effect, that they did not consider themselves able to lay down any distinct rule or principle for guidance in the treatment of any class, but thought that each case should be decided upon its merits.

Abstract of errors discovered in 10,000 entries.

30. Mr. Prinsep then laid before the Committee an abstract of the errors discovered in 10,000 entries under enquiry in seven pergunnas.

The seven pergunnas contain villages, ...	3,102
With holdings of tenants having "right of occupancy" according to the record, ...	26,364
Of these enquiry has been made in villages, ...	1,675
Containing holdings of tenants having "right of occupancy" according to the record,	10,770

The holdings are ascertained to be as follows:—

A.	Coparceners holding one of another, ...	853	
	Members of a common holding, ...	178	1,031
B.	(2) Ordinary village servants, ...	1,588	
	Sapis, sweepers, &c,...	551	2,139
C.	Relatives of proprietors pichlug and near relatives	47	
	Agents for the master, ...	5	
	Servants acting for absentees, ...	5	57
D.	Mortgagees,...		2
E.	Non-resident members (paikasht) one-half erroneously recorded, ...		1,734
	Total, ...		4,973
F.	Assignees of Government Revenue ordinary Mafidars, ...	962	
	Jageerdars	51	1,013
G.	Holders of Tukias and religious grants, ...		189
	Persons who pleaded location by Kardars, ...		32
	Total, ...		1,234
	Total of the 2 main divisions, ...		6,207
	Cases differing from preceding being chiefly tenants at will, or for terms, or fixed leases, ...		3,967
	Tenant declared hereditary by decree of Court at last settlement, ...		515
	Grand total under enquiry, ...		10,469

From the statistics Mr. Prinsep pointed out that no less than one-half of the entries would never have been so recorded had the principle enunciated

by the Chief Commissioner in 1855 been observed. And again, that in the same 10,770 holdings no less than 1,103 tenants when confronted with their land-lords admitted that they were tenants at will and wished themselves entered on the new record as such; while another 1,460 were pronounced by the assessors to have no right or privileges, and to be undeserving of any indulgence whatever, under the present enquiry, being one and all of the class which under Sikh rule would have been absolutely at the will of the proprietor as regarded their occupancy. Thus in more than one-fifth of the whole entries, a privileged position had been *conferred* at the last settlement on persons who had no claim whatever to it.

The partiality shown to the hereditary tenant in the matter of rent.

31. Mr. Prinsep then drew attention to a fact which he considered had the deepest significance, and which showed how inconsiderately the proprietors had been treated, and how little regard had been paid to their interests. Out of 10,469 holdings, no less than 3,261 or as many as one-third had actually been entered as having "right of *permanent* occupancy," the meaning of which was that they could not be evicted from their lands, *so long as they paid rent, yet no rent was fixed at the last settlement nor had any rent been paid from that day to this.* The tenants were protected for ever, while, at the same time, they were exempted from all obligations towards the proprietors of the land upon whom all the liabilities and burthens fell.

Such an anomaly as this was discreditable to Government, and directly opposed to the law which had declared that "cultivators have a right of occu-"pancy *only so long* as certain rent or a rate of rent determinable on certain "principles according to local rates or usages be paid."

Those tenants therefore who had paid no rent since the last settlement had no legal right of occupancy whatever. Out of ten thousand holdings, it appeared that there were but 2,086 cases in which the tenant was completely protected, and could not be evicted unconditionally according to local custom and the recorded opinion of assessors.

There were thus but one-fifth of the whole number who could be considered "Maurusi" according to the settlement definition of the term.

The Committee would maintain the status of these tenants.

32. With regard to the tenants entered as hereditary who had even paid no rent, the committee was of opinion that although the payment of rent was necessary to legalize their position, yet that it would not be just now to enter them as tenants at will, but that they should be left "maurusi" or hereditary, the rent to be paid by them for the future being fixed.

The issue of policy. Would it be just and expedient to alter the status of the hereditary cultivator, or would such alteration be considered a breach of faith by the people.

33. The Committee then passed to the 3rd issue, that of policy. This was but briefly discussed at the time as the Committee's disposal was limited.

Colonel Lake and Mr. Blyth seemed to admit the necessity of some general enquiry, under restrictions. Major Cracroft, Messrs. Melvill and Brandreth thought it most impolitic to re-open the question, which had been definitely closed at the last settlement. They considered that the alteration of the status of the hereditary cultivators would be considered by the people as a breach of faith on the part of the Government, would unsettle men's minds and cause

great and general dissatisfaction. They also held that the assent to the record of the last settlement which the fact of the entries having been uncontested for eight years implied, should bar any claim to rectify even proved or admitted errors.

With regard to the dissatisfaction which, it was stated, would be the result of any change in the position of the hereditary tenants, Mr. Prinsep observed that there had been a general admission on the part even of the tenants themselves of the justice of the measure proposed. Colonel Lake stated that he had recently marched through the districts in which a revision of settlement was going on but had heard no complaints.

Mr. Melvill attributed this to the fact that Mr. Prinsep had allowed the tenants to retain their present status for some years longer: and the natives of India were too apathetic to complain of an evil which, for them, only existed in the future.

Mr. Prinsep denied that this argument was of much weight. His experience was to the effect that Punjabees were always ready to assert their rights, and the chief reason that the amendment of the record had been received with approbation by the people was, that they were convinced of the justice of the proposed changes.

He also asserted that so far from the people seeing in the rectification of the errors of the last settlement any *breach of faith* on the part of Government, they had been anxiously expecting and hoping for such a rectification. They had fully believed that at the revision of settlement, the question now beforo the Committee would be re-opned, and, believing this, they had not cared to contest the entries, to *combat* for what they believed the justice of the Government would eventually *give* them.

Syad Hadi Hûssên Khan and Munshi Ami Chund entirely agreed with the above. Both considered that the Government was bound to rectify known errors, and both asserted that the people generally expected such a course. The Syad stated that he had often seen orders passed on petitions subsequent to the last settlement to the effect that no action could now be taken, but at the new settlement the claims of petitioner would be enquired into. He had himself passed similar orders.

Justice the only policy.

34. Mr. Prinsep urged, in conclusion, that the true policy of Government was to assure to every class its legitimate rights; many and grave errors had been committed and the rights of one most important class had been, through inadvertence, disregarded. It was now when a favorable opportunity had occurred and the voice of the country demanded it, that Government should rectify the errors it had itself made, remembering that so long as a great wrong remained unrighted, it was unworthy of a powerful Government to think of any other expediency than justice.

The committee then separated.

APPENDIX No. I.

LAND-LORD AND TENANT.

SETTLEMENT COMMISSIONER'S REPORT,

No. 196, DATED 28th APRIL 1868.

Copy of letter No. 196, dated 28th April 1863, from the Settlement Commissioner, Amritsur Division, to the Financial Commissioner, Punjab.

1. The subject of the relative position of landlord and tenant is one that must now come under consideration: any new principles that are to be laid down should receive the early attention of Government, that I may be put in a position to convey instructions for the guidance of the Courts under my jurisdiction.

2. In the first place, I wish to enquire whether the position of the so called "hereditary cultivator" (Mauroosee) who has been recorded as such in the old Settlement papers, is in any way to be re-opened.

3. I deem it right to solicit orders once for all on this head, as there is an impression abroad, among the proprietary classes, that, at the new settlement, land-owners *will* be allowed to make their own terms with their tenants, and that the tenure does not bar the right of the land-owner to assume possession of the land, provided he can show that he wants the land for the purpose of extending his own *cultivation*; the plea urged being that the tenure is quite a new creation of the British Government; if it was intended to prohibit the right of eviction altogether, there was no such prohibition in former days; and that it is a well known custom that the land-owner could always evict his tenant no matter how long the prescriptive occupancy, provided the land was required by the proprietor for the *purpose of extending his own cultivation.*

4. From enquiries that I have made, in one purgunna certainly, the conviction is very strong, and grows stronger every day, that there were very few tenants who during Sikh times could come under the definition of "hereditary cultivators" in the sense we attach to this position, and simply for this reason that it is universally admitted that the land-owner *had the right to evict* any tenant, and could do so at any time; that this right was seldom exercised in case of resident cultivators who held the land from the founding of the village, or from generation to generation: but still, that a proprietor was in no way barred by local usage from *evicting any tenant,* whatever the circumstances of his occupancy, and however long he may have held the land, *provided he wanted it to cultivate it himself.*

5. In the face of this impression abroad, and the existence of this local usage, which is admitted by every body who has been spoken to, both by my Assistant and the Tehseeldars in my presence at Amritsur; and by my Assistant at Buttala, who was attended on by a deputation of leading agriculturists; I am driven to make this enquiry, viz:—Are we to allow the position of the recorded hereditary cultivator to be re-opened or not?

6. My own opinion is this, that, if the entry in the Settlement record is to be considered to have the weight of a Judicial decision, and this is ruled to be so, then no claim can be heard except for "malikana" or "rent," which of course will be taken up.

7. But if it is thought right and equitable to let the whole status of tenants now adjust itself according to local usages that exist, whether the tenant be already recorded as "hereditary" or "tenant-at-will," then, I think it but fair to allow the objectors of the first class to sue for the higher position of an occupant with full proprietary possession, provided he *can* do so, and bring proof to support his claim.

8. There can be no doubt it would have been much better to drop such terms as "hereditary cultivator" (mauroosee), and "tenant-at-will" described in the term ("ghair mauroosee"), and to adopt local names wherever we find that they exist.

9. That they *do* exist there can be no doubt; I find, as far as I have gone in my enquiries, that there are tenants described under different terms, such as the following :—

(1) *Pindwala.*—Resident tenant, who can hold on as long as he likes, but must give up to the land-owner whenever desired by him for his own purposes: though a proprietor cannot evict to give to another tenant, he can have a partner and separate "koora" (manure heaps) : is entitled to share of water in well by helping in its construction by labor, though he cannot share in building or repairing the well.

(2) *Pahee or Phaeekasht.*—Non-resident, who comes only for the crop. He cannot be evicted during the season, but is a mere tenant-at-will in every other respect.

(3) *Butta-mar.*—Tenants, who have cleared the soil and been put to expense. They pay nothing for first crop. They can place their manure "koora" on their own fields out of the village site. They cannot plant nor sell trees, but can use them for domestic or agricultural purposes. They cannot be evicted, except when the land is required by the owner to cultivate himself. They cannot be evicted to be replaced by another tenant.

(4) *Hissa Chook.*—A person recorded as hereditary tenant under our system, who formerly engaged to share liabilities with a broken down proprietor on some mutual understanding; who, generally under a money settlement paid according to cash rates, the same as any other member of the proprietary brotherhood; but who could by usage be evicted by the land-owner on adjustment of accounts, and the latter requiring the land to cultivate himself.

10. I have no doubt, as further enquiries are made in different tracts, a different class, with known names will be found. It will not be difficult then to begin on that basis; namely, a particular class of tenants being designated by a particular name, what are the privileges and conditions of occupancy? By leaving such cases to be decided by an intelligent jury of agriculturists or by a committee appointed for this purpose, representing the two interests affected, I see no difficulty in being able to dispose of each case, and in course of time, we shall arrive at some satisfactory conclusion. The chief issues to be put should be :—

I. Has the land-owner power to evict at all?

II. Has the tenant any rights which should be protected, and if so how does local usage protect them?

III. What are the terms of future occupancy?

IV. What amount of rent (malikana) should be imposed; whether it is to be fixed for any period, or to be subject to mutual agreement from year to year.

11. The subject is one which must be very carefully dealt with, and the less our Courts interfere, the nearer we shall follow existing usage, and the more readily will the position adjust itself, as a case of demand and supply.

12. Regarding the class of tenants recorded as "tenants-at will," this is the course I would suggest to be followed, viz., to draw up the issues, and let each dispute be settled by a village Sooltanee punchayut.

13. Regarding the more important class termed "*Mouroosee,*" I wish to receive distinct instructions as to whether their name and position is to be considered a fixity, or whether Financial Commissioner's Circular No. 33, dated 21st July 1860, (para: 5) is to be applied in spirit; when *primâ facie* it is shewn, that a person has been unduly recorded as having a right of "hereditary occupancy;" when there is reason to think he has been merely 12 or 15 years in possession, and may even happen to reside in a neighbouring village; when the proprietor has little or no land, and pleads the general custom that there is no bar to his power to evict, on his wishing to secure personal occupancy.

14. The number of cases that will fill the Courts, if the privilege is allowed to land-owner to *sue* against hereditary cultivators on the plea of general usage being against the possession created by the law, will I fear be very numerous; as the value of land has risen, and is rising every day, and there is a strong feeling among proprietary classes to abolish the "hereditary" position altogether.

15. *New* claims to the right of hereditary occupancy I am altogether opposed to entertain. The omission to sue at last settlement, or failure to have himself recorded as such before, should, in my opinion, bar the right to sue now; while to revert to the principle, that because a person can show that he has cultivated land for 12 years uninterruptedly as resident of the village, and 20 years as non-resident, *therefore* he is entitled to this privileged position in future, appears to me totally at variance with the custom of the country, and would I am sure be now loudly resisted by the proprietary classes in general, who are already beginning to show much uneasiness at what was done at last settlement.

16. Still, though I am against hearing a claim of this description, I see nothing objectionable in any tenant now suing for a position better than that of a mere "tenant-at-will." It may be the person so recorded can show a title to be protected according to the usages that exist, and if so, his claim can be made over to the Punchayut or Committee, who will be expected to define his exact position and privileges, whether he can be evicted at will of proprietor or not, whether any limitation can be put upon the demand for rent for a period of years, or not, and so forth; and in this way, the enquiries, as made at this settlement, will have this effect, that they will do away with what might have proved an injustice to a person being recorded "ghair mouroosee," who really could show some good cause why he should be protected against a sudden or needless eviction.

17. In conveying your orders, I shall expect instructions not only regarding the hereditary cultivators so recorded, but also whether if they are to be subjected to non-suit by the land-owner, the hereditary cultivator may not sue to be recorded "proprietor." If the question is to be opened regarding the one, it should be regarding the other. Interests which are so mutually connected can be expected to adjust themselves in no other way.

18. Regarding the principle upon which the hereditary cultivator so recorded might be expected to be able to show that he has really been in position of a proprietor, I think the following instances may be cited to illustrate how the one position can merge into the other:—

I. Where the village community is not composed of an ancestral or family stock, but each person of different caste has been recorded proprietor at last Settlement. Here it can be shown.—

(1.) That the occupant has a long prescriptive, heritable occupancy (*Peeoo Pootr*).

(2.) That he cleared the soil (*Boota Shikafee*).

(3.) That he may have held his land since village was founded (*Moodle.*)

(4.) That he has paid *no* fees of a proprietary incident of any kind to anybody (*Na-lya-Biswee*).

(5.) That he has enjoyed the full profits of cultivator as any other recorded proprietor (*Kool-nufa-khaya*).

(6) That he has sometimes repaired the well, which originally never was constructed by the rest of the proprietors or been a part of their property (*Lagut-koo-na-di-tha*).

(7.) That whenever money rates existed, whether during Sikh rule, at summary settlement, or during regular settlements, he has been allowed to bear the liabilities of the Government revenue: the profit or loss of which has been on his own shoulders, without demur or objection raised (*Nukdee Humeesha Liya*).

19. Where most of these positions can be established by direct evidence then the Court should, after taking opinion of committee, decree *absolute proprietorship* of the occupancy recorded.

II. When the village so constituted as that a strong caste brotherhood of one ancestral stock is admitted to have the original right from former days as land-lords of the soil, and there is no trace of any individual of any other description being recorded proprietor, and it is proved that the land was made over to the tenant for purpose of cultivation: then, even supposing some of the incidents described above be proved on his behalf, the decree should only be for a tenancy on a terminable lease, with rent obligations to be fixed by punchayut; the fact of not having paid "malikana" before should not be much dwelt upon, as it is well known the Sikh Government did not leave a margin for profit. The omission then to demand "malikana" can scarcely be said to be entirely as the fault of the land-owner.

20. *III, When, however, the facts of the constitution of the estate are as in No II, and all positions are established by proof*: then the decree should be for absolute proprietorship, the nominal landlords receiving *fixed rate of rent in perpetuity* in the same way as a sum is fixed in a Talooquadaree tenure.

21. However, each case must come to be decided on its merits whereever it is thought just for the Court to defend the hereditary cultivator now suing for "actual ownership," the decree given would of course be only for *the*

land held in actual occupancy, there would be no right to a share in common lands, the right to grazing could be allowed so long as such lands remained uncultivated.

22. If you should approve of these views, I am ready to give effect to them: but I beg I may be placed in receipt of full instructions, and as early a possible, for these claims are beginning to come in. At present I do not think it right to take them up, till the general views of Government have been propounded, and I am informed what is required to be done to define more carefully the position of landlord and tenant.

23. One thing, however, I advocate throughout, that when the Courts take action, it be distinctly laid down that whenever the cases cannot be amicably settled, they are to be made over for the verdict of a competent and popular village tribunal before the decision is given. If this be enforced, we may expect to be on the safe side, and the evil of stereotyping incorrect tenures will certainly not be repeated.

(Signed) E. A. PRINSEP,

Settlement Commissioner.

APPENDIX No. II.

LAND-LORD AND TENANT.

REPLIES FROM DISTRICT OFFICERS.

Circular No. 69—3229, *dated* 21*st August* 1863, *from the Financial Commissioner Punjab, to all Commissioners and* **Superintendents**, *except the Delhi and Hissar Divisions.*

REVENUE.

(Position, liabilities and privilege of heriditary cultivators.)

You are aware that much difference of opinion exists between officers of experience, in regard to the position, liabilities and privileges of that class of cultivators usually denominated "hereditary," as well as in regard to the circumstances or conditions, that may suffice to constitute a member of that class; and that a great general desire is felt, that some definite rules or principles should be laid down, by means of which these may be ordinarily determined, with facility and tolerable certainty and uniformity.

2. It appears to me, however, that the pre-existing usage of the country in this matter, has not as yet been adequately enquired into, or ascertained, and this should in my opinion precede all other steps taken in the matter, constituting as it does one of the chief points to be taken into consideration when coming to a determination. On this question, if not the most important of all, seeing that if the existence of a distinct usage can be clearly established; it may well admit of doubt, whether the Judicial Courts, and still less the Government, have any right to set aside that usage, on general grounds of expediency, or usage of other lands.

3. I request accordingly that you will have it ascertained in each district of your Division, with as much precision and certainty as may be attainable; what was the position of the most favored non-proprietary cultivators previous to annexation, to what extent their right of possession was recognized; and on what condition, it was held, whether the proprietor could eject them in favor of others; and if so, on what terms, and if such was not generally recognized, whether he could do so, in the event of his desiring himself to cultivate the land, and what concessions were required of him, or usually made by him, in such cases.

4. I would by no means be understood to hold the opinion that we must in all cases, rigidly adhere to former usage in such matters; or that no causes can intervene to render some change expedient or necessary; more especially if that usage has been variable or undeterminate, but I am very decidedly of opinion, that if the pre-existing usage be first of all clearly ascertained, we shall have made a most important advance towards the solution of all difficulties, and for this reason I should wish a full and impartial enquiry to be everywhere made on this point; though with as little of ostentation as possible, that men's minds may not be needlesly disturbed.

The points on which Financial Commissioner called for precise informatinn may be arranged under 3 heads thus:—

I. (a) What was the position of most favored non-proprietary cultivators previous to annexation.

(b) To what extent was this position recognized, and on what conditions was it held.

II. Could the proprietor eject them in favor *of others*, and if so on what terms.

III. (a) If the power of eviction in favor of others was not generally recognized could he evict in case he wanted the land for *his own* cultivation.

(b) In such cases, (*i. e.*, eviction) what concessions to the cultivator were required of, or usually made by him.

The following extracts are taken from reports of officers in the Administration which reply to the above 3 questions.

AMRITSUR DIVISION.

Major Farrington, Officiating Commissioner.

I. It would appear that those who are called under our system "hereditary cultivators," held under various and uncertain tenures, in fact we may be said to have created the class, certainly in as far as it is at present constituted: we hear no where of any whose continuous cultivation for 12 years gave them the rights they now possess.

II. and III. No reply.

AMRITSUR DISTRICT.

Major Mercer, Deputy Commissioner.

The 2nd was the *Bhaewal*, who was generally a relation or intimate friend of the proprietor, whom he associated with himself as a co-partner to cultivate land, when he was unable to manage alone. He enjoyed many of the privileges of the proprietor himself, the proprietary right was retained only in name. The *Bhaewal* did not always pay *Malikana*, or rent to the proprietor. He possessed the privilege of cutting timber, digging wells, &c., but no additional proprietary right was conferred on him by the exercise of these privileges. His heirs succeeded to them to serve the convenience of the real proprietor, but not as an hereditary right.

If he had improved the estate by any outlay of his own, he acquired the position of a partner in trade, who cannot be ejected from partnership without an adjustment of accounts, unless there existed any agreement to the contrary.

The estate was released to the real proprietor by the death of the partner, and his heir or representative was admitted to the partnership or not entirely at the pleasure of the proprietor.

He had no share in the common lands of the village, and was not recognized amongst the village proprietors ; his cattle, grazed with the rest of the village.

There did, however, exist, in some places, a class known as *Booteh Mar*, whose position was more analogous to the hereditary cultivator. This class was probably adventurers from other parts, who sought for waste land to cul-

tivate, and entered into a stipulation with the village proprietors to take up lands which had hitherto been uncultivated, on terms which were more clearly defined between them, as far as I can ascertain; this denomination will be found chiefly confined to those parts of the district which were thinly populated and sparingly cultivated when the province was annexed. The term itself indicates some additional labor, which was probably made the condition of the hereditary rights. But even with this class, the rights were by no means clearly defined, and their number was small.

The conditions were various, and were such as were agreed on between the parties. The most common were, dispossession at the convenience of the proprietor after an adjustment of accounts for improvements made, such as sinking wells, planting of trees and the like: when the proprietor received a portion of the produce, a third was the share usually fixed. The cultivator built his own dwelling huts, and small compensation was given to him by the proprietor if dispossessed at his will, whether there was any expressed engagement to this effect or not. If the cultivator vacated his land, all his privileges ceased. In some parts he had right to remove or dispose of his dwelling honse, but this was by no means a universal custom. He had no right of transfer, nor did his heir inherit as a matter of course.

II. Unquestionably the proprietor had a right to eject, but was bound by custom to make an adjustment of accounts for improvements made. He could eject to put another in on more favorable terms, or when the tenant made himself offensive. In fact, he enjoyed the full and unrestricted power to eject.

III. He exercised this right equally in his own favor, or when he desired to cultivate the land himself. He made such concessions on obliging a tenant to vacate as he thought equitable, but was his own master in this respect.

SEALKOTE DISTRICT.

J. W. Macnabb, Esquire, Deputy Commissioner.

I. Land was abundant and labor scarce, hence the proprietor was obliged in a general way to consult the wishes and interests of the cultivators, and thus the latter in many instances possessed for a series of years unacknowledged rights, which they now exercise under the name of hereditary cultivators; at the same time the power of the proprietors to oust or transfer cultivators was, I believe, unquestioned, though rarely if ever exercised.

JULLUNDHUR DIVISION.

Colonel E. Lake, Commissioner and Superintendent.

I. * * or property in land until the British rule came. With the exception of a favored minority, proprietors were reduced to the level of cultivators, and were glad to find tenants who would permanently occupy the land, and help them to bear the burden of a heavy Government demand.

In determining the relations which ought to be maintained between the proprietors and the hereditary cultivators, we ought to bear in mind that in

many villages the title of the so called proprietors is not much better than that of the hereditary cultivators, and originated much in the same way. It is well known that in the Jullundhur Doab in former times there were some nine hundred estates held by Nanoo Rajpoots, and a similar number by Mungle Rajpoots, and that these have gradually been displaced by Juts, Raeens, Sumras and others, who by their superior industry were enabled to meet a heavy government demand, which proved intolerable to the improvident and extravagant Rajpoot. The latter may urge with some justice that the loss of their proprietary rights may be traced to the unfairness of the government demand, and that abstract justice requires that their rights should be restored to them. The communities who have displaced them on the other hand may urge to the Rajpoots, that when your lands ceased to bear any value you surrendered them to us, and by bearing heavy burdens and prices on account of these lands, we have established a title to them which is superior to yours. Many of these cases arose at the time of Settlement, and I believe in the majority of cases the rights of occupants were upheld against those of the ousted owners, still as I said before, their title is scarcely superior to that of many of the so called hereditary cultivators.

On the other hand, although the hereditary cultivators are styled tenants, their tenure is very different from that of ordinary tenants in England, and in many localities they were so little dependent upon proprietors, that they could scarcely be regarded as tenants at all, or if they were tenants at all they were tenants of the crown rather than of any particular proprietor.

II. The real truth is, I believe, that under the Sikh rule the practice was not uniform, and varied at different times and under different Kardars, for while on one hand the existence of the communities of cultivators such as the Raeens of Jullundhur who have been there some two hundred years, shows that, if proprietors had the right of ousting cultivators, they did not often exercise it, on the other hand it must be admitted that, in theory at least, the distinction between cultivators and proprietors was recognized by the Sikhs.

I am of opinion that the pre-existing usage of the country during the hundred years it was under the Sikh rule, would not be a safe or desirable guide for us to follow. That was a period in which might was right, and Supreme Authority was vested in ignorant persons, who exercised their power in a very arbitrary manner, and without reference to any fixed principles. For half the period to which I refer the Punjab was held by conquest-tenure Jagheerdars; and the information we have regarding them justifies me in saying that neither their Judicial decisions, nor the usages enforced by them, would be valuable to us as precedents. They were followed by Maharajah Ranjeet Sing and his successors, and among the Kardars and others to whom the various administrations of the country were entrusted, there were few who in determining any question which might arise between proprietors and cultivators, would not be influenced by other considerations than the respective rights of the parties. Thus, if an influential proprietor, who was in favor, wished to oust a cultivator, his right to do so would be at once admitted, if on the other hand the proprietor was poor, and the Kardar imagined that the revenue would suffer by the ejectment af an industrious tenant, the occupation of the latter would be maintained against the will of the proprietor.

To invest all who had been for 12 years and upwards in possession of the same fields with the privileges of tenants with a right of occupancy, was, I think, a great mistake. Again, to make over to the tender mercy of proprietors all

cultivating communities, some of whom (whether Raeens of Jullundhur) have been some 2 hundred years in occupation and by whose industry in many cases the proprietors were saved from ruin, more discrimination is needed to determine who are hereditary cultivators; but as compared with the great mass of cultivators there are undoubtedly some who hold on a tenure which entitles them to consideration, and to the privileges accorded in the Punjab to hereditary cultivators.

III. No reply.

JULLUNDHUR DISTRICT.

H. Elphinstone, Esquire, Deputy Commissioner.

I and II. As far as I have been able to ascertain, there seems no doubt that in this District at least there was no class of cultivators possessed of the privileges now enjoyed by the so called hereditary cultivators.

It is generally admitted here that a specially favored non-proprietary class of cultivators existed before the introduction of the British rule. No length of possession as tenants entitled any class of cultivators to hold at fixed rates, or prevented the proprietors from ejecting them in favor of others. The power of the proprietors appears in this respect, to have been unlimited and unrestrained except by the arbitrary interference of the Kardars, who prohibited the ejectment of industrious cultivators and again forced the proprietors themselves in some cases to give up their cultivation, if through their neglect or misfortune any deterioration became apparent.

And from what can now be ascertained, it seems clear that the cultivators were all in the position of those now denominated tenants at will, and that the so called hereditary privileges were introduced by our own government.

III. No reply.

HOOSHYARPOOR DISTRICT.

J. H. Lang, Esquire, Assistant Commissioner for Deputy Commissioner.

I. From enquiries made chiefly from the Canoongoes, it appears to me that the only distinction recognized previous to our rule in the position of cultivators, was between resident cultivators and those who came from other villages called. "Pykasht". The Pykasht cultivators being called on to pay to the proprietor a fee called "Sereene" of 2 or 3 seers per maund, which absolved them from being called on for Begâree.

The right of possession only seems to have been recognized as long as the Revenue was paid regularly. The right to dig wells was readily granted by the Kardars to all, and any who were prepared to undertake this, as affording a greater security and opportunity for the demand being regularly paid.

II. To the best of my information, the proprietor was not empowered to oust the cultivators, this power was vested in the Kardar, who moreover ousted proprietors just as readily as cultivators.

III. No reply.

KANGRA DISTRICT.

R. Egerton, Esqr., Deputy Commissioner.

I. I have the honor to refer you to Mr. Barnes' Settlement report paras. 124 to 133 inclusive. In these paras. Mr. Barnes explains the gradations by which a cultivator gradually obtains a hereditary right.

On referring to the Tehseeldars for information on the subject, they unanimously report that before the introduction of British rule, the tenure of cultivators was only at will, removable at pleasure by the proprietor, and that the intermediate tenure now known as hereditary cultivator, did not previously exist.

I do not look upon this view as inconsistent with what Mr. Barnes says. That officer does not in any case apparently allude to the hereditary right of cultivator springing up in the presence of an acknowledged proprietor, but rather to such right gradually requiring force by the cultivator exercising for a time the functions of proprietor and revenue payer.

UMBALLAH DIVISION.

D. G. Berkely, Esq., Assistant Commissioner in charge Commissioner's Office.

I. It will be perceived that as a general rule, no intermediate class between proprietors and tenants at will was known, those who had extended the cultivation of the village over lands previously waste, and who had been admitted by the village proprietors to share directly in their responsibilities, as for instance, in payment of fines inflicted on the village.

It seems therefore that prior to the British rule the existence of no class of non-proprietary cultivators possessing rights of possession beyond the season or year, as the case may have been, for which they cultivated, can be clearly traced, and that the class now recorded as hereditary cultivators owes its origin to our Settlement Officers. It comprises on the one hand those who were previous to the Settlement simply tenants at will of long standing, whom the village community had no motive to eject until moderate Revenue rates had been fixed by Government to be in force for a long period; and on the other, those who had been for a longer or shorter period, *de facto* in the same position with the present proprietary community, but who had been admitted subsequently to the formation of the brotherhood, to a share in the cultivation or had been intruded by the former rulers upon the original propietary body.

II. and III. No reply.

UMBALLAH DISTRICT.

Captain J. S. Tighe, Officiating Deputy Commissioner.

I. Their position was equal to that of the old proprietors; in most cases there was no difference of any kind, both proprietor and the person declared at Settlement to be hereditary tenant paying exactly the same rates to the Sikh collector of Revenue; in some cases a portion of the rent levied from the whole was returned to one or two favored individuals out of the body of the old proprietors as *inam*, and in this the hereditary tenant did not share.

The Sikhs made no distinction between proprietors as a body and tenants. With the exception of one or two head-men or favored individuals all paid alike.

II. and III. No reply.

LOODIANAH DISTRICT.

C. P. Eliott, Esqr., Officiating Deputy Commissioner.

I Generally the proprietors were those who had first located themselves in the village and their descendants: all others were cultivators who were removable at will. If the proprietor could not pay his revenue the Government took it from the cultivator, who from that time was looked upon as owner of the land. It is also stated that if a tenant had broken up uncultivated lands, and if he had ever shared with the proprietors in payment of fines inflicted on the village, he could not be afterwards turned out, but the rights of such cultivation were neither clear nor defined.

Non-proprietary cultivators at the period in question had no recognized right of possession in lands they cultivated, they held possession at the pleasure and will of the proprietor, the constitution might vary according to agreement, but the principle was the same throughout the hills.

II. It was in the power of proprietors to eject the cultivators, in favor of others without making any concession whatever. It mattered not how long the cultivator might have been on the land, he was liable to ejection at any time at the will of the proprietor.

III. No reply.

DELHIE DIVISION.

Colonel G. H. Hamilton, Offg. Comr. and Superintendent.

I. The District officers all agree in considering that prior to the British regime there was no recognized class of this description. In this opinion I coincide. But the peculiar state of the country under native rule kept the cultivator in a different status from that which he now occupies. In those days of anarchy and misrule, the poorer classes could exist only under the protection of their superiors, and the superior classes derived from their

dependents their wealth, influence, and position. Each class depended on the other, and each was interested in keeping up the connection. The superior furnished land to cultivate and means of cultivation, and the inferior gave his labor. It was the interest of the superior to have many dependents, and inferior if not actully a serf or "adscriptus gleba," was too closely connected with his native village to think of emigration. The interests of both were similar, they both wanted to cultivate the land, to secure their crops from plunder, and to resist oppression. They were thus mutually bound to each other, and they acted for their mutual benefit. Neither had any defined rights, and as long as the Government revenue was paid, the ruling power had hardly occasion to interfere.

II. and III. No reply.

DELHIE DISTRICT,

F. Cooper, Esquire, Deputy Commissioner.

I. Diwan Sunput Rae of Bullubgurh states that there was no difference between old and new cultivators. The proprietor could throw them out at once. But sometimes if an ousted ancient cultivator could get his complaint laid before the Rajah, he was sometimes reinstated, but only as a matter of favor: an ancient cultivator occasionally enjoyed the privileges of a little abatement of rent. From the above it will be gathered what has ever been my own conviction, viz: that whatever privileges cultivators of long family standing may have enjoyed, and however favorably the claims of their descendants to succeed may have been listened to, no such thing as a recognized and admitted right to hereditary cultivatorship ever existed.

II. and III. No reply.

KURNAL DISTRICT.

Major W. R. Elliott, Deputy Commissioner.

I. The cultivator of land was assured of possession so long as he lived and was willing and able to cultivate his lands, for none cared to deprive him of possession, land being (as I have said already) in those days comparatively of no value, and the only changes amongst non-proprietary cultivators of the soil, when they *did* occur, arose from death of the cultivator or his voluntary desertion of the lands from inability to cultivate the same. Under the above circumstances the non-proprietary cultivators of the soil and the proprietors never clashed, or had cause to do so, in regard to their respective position, rights and liabilities, the question of the powers of the proprietors to eject a non-proprietary cultivator of his lands, I firmly believe, was never raised prior to annexation, because there was never any necessity or occasion to do so. So little was land coveted at that period.

II. and III. No reply.

Goorgaon District.

H. E. Jacomb, Esquire, Officiating Deputy Commissioner.

I. Of this class, there were here at least, under former rule no sub-divisions. It was distinct, and all its members had the same privileges, position and liabilities. The two distinguishing incidents of their tenure were the right of permanent occupancy, and the right of having their rates fixed by the authority of the Government. These precluded the right of ejection by the proprietor at option, whether for others or himself to cultivate with or without concessions, powers that only in fact existed in relation to tenants at will, whose rents were fixed by mutual agreement and not by the intervention of authority.

II. and III. No reply.

Hissar Division.

J. Naesmyth, Esquire, Officiating Commissioner and Superintendent.

I. As in all other parts of the N. W. Provinces and the Punjab, the position of hereditary cultivator was a creation of the British Government. Where village communities existed in this division, prior to our rule, there was no recognized intermediate class between the proprietor and cultivator, the latter being in most instances entirely subject to the former.

Although the status of those originally included under the general appelation of cultivators has been now analyzed and defined, and although the cultivating class was, under the pre-existing usage of the country, nominally in complete subjection to the proprietor, there is no doubt that practically no cultivator who had been associated with the proprietor, either in the original formation of the village, or if subsequently established, had for a series of years carried on the cultivation, would have been ejected, except under extrordinary circumstances, so that the distinctions now made and fixed by our settlement appear in a great measure to have been formerly recognized if not in name, at least in practice.

II. and III. No. reply.

Rawul Pindee Division.

J. E. Cracroft, Esquire, Officiating Commissioner and Superintendent.

I. I think I may safely assert for the whole division that there cannot be found any recognized general usage in the determination of the relations between land-lord and tenant, much less of any body of cultivators possessing the peculiar privileges, under various denominations, of what we call hereditary cultivators. To account for this it would be sufficient to state that the distinction between proprietors and cultivators had to a great extent become, or continued to be extinct during the rule of the Sikh power.

I confess, I have been unable to trace any custom whereby the mere fact of breaking up bunjur land conferred a title to permanent occupancy. The advantages offered I have found to consist invariably in abatemant of produce, or rent taken for a terms of year gradually revised until the rent reached its normal figure with the improvement of the land.

II. But as a general rule it may be said that in strong Zemindaree tenures, such as exist in Pindee Gheb, Tullagunge and Khatna, and Putadaree tenures similar to those of Chuck, the cultivator had no recognized rights; the proprietor was all powerful; he could eject the cultivator without any compensation, or change his lands at pleasure. In such tenures the relations between land-lord and tenant were regulated, not by any code of laws, usages, or precedents, but by the ordinary principles of common interest, when these were not overborne by the power of the proprietor. On the other hand in Bhyachara estates, the proprietors sank more or less to nothing, and the cultivators were raised in a greater or less degree to the status of proprietors; but there was no usage that regulated these matters; the thing came about under the imperative necessities of the time.

III. No reply.

Jhelum District.

J. B. Bristow, Esquire, Deputy Commissioner.

I. The replies I have received to these interrogations are clearly of a nature to show that no such condition as that of an hereditary cultivator existed in this part of the province prior to annexation. It appears that the cultivators were best off who cultivated under the kardars, but as for having any hereditary rights to do so being recognized by these officials, they had nothing of the kind. A sort of precarious continuance in cultivation of the same fields was often observed on the part of Jagheerdars and Talloqadars, but this was dependent on the mere will of the Jagheerdars and Talloqadars. Relations were thus frequently kept on as cultivators, but, on any quarel arising, they were liable to be ejected; and were ejected without reference to the period they may have cultivated.

II. and III. No reply.

Shahpoor District.

W. G. Davies, Esquire, Deputy Commissioner.

I. Mr. Ousely in the 83 and 84 paras. writes on this subject as follows:—"the term hereditary cultivator was not understood in the District of Shahpoor for several years after annexation, but enquiry showed that there were parties who, though they had no claim to proprietary title, still asserted a claim to be allowed to cultivate the land in their possession, subject to the payment of a rent more favorable than was demanded from the mere tenant at will. These men had acquired their rights in one of two ways. They had either broken up the waste land (generally laid on the banks of the river and were called "Abad Karm" or "Bunjur shigafan") or they had sunk well in the land which

they had cultivated, or had cleared out and put into working order an old well which was situated on the land which they tilled." In either case it was the custom to allow tenants of the above description a certain amount of indulgence, compared with ordinary tenants in taking their rent by "Buttai" or kunkoot. If the prevalent rate for buttai was equal division between land-lord and tenant, then the "abadkar" or "bunjur shigaf" was allowed to deduct out of the land-lord's share of the crops a certain portion varying from $\frac{1}{4}$ to $\frac{1}{2}$ of it, and further on Mr. Ousely adds that, "the cultivator after paying his share of the revenue enjoyed whatever profit was left on his cultivation, giving only about 3 per cent on his quota of the Government demand (ordinarily in grain or kind) to the nominal proprietor, but the cultivator was not allowed to transfer his rights by sale or mortgage;" but I may mention that the Sikh *Kardars* scarcely recognized any distinction between the two classes. They took the Government share of the produce by Buttai or "kunkoot" usually the latter, equally from both, and the indulgence of which Mr. Ousely speaks by which the cultivator who had broken up lands on the banks of the rivers was allowed to deduct a certain portion of the crops from the share which he would otherwise have paid, was an indulgence granted *not by land-lord, but by the Government representative* for the time being, and was generally the result of a verbal or written engagement made between the parties before hand. The share so deducted was callled "bug-i-towdoodana," and was either a fourth of the whole produce ("Chaharum pucca") or only a fourth of the Government share ("Chaharum kutcha"), at the same time however that the cultivator who had either reclaimed waste land or sunk a well on land occupied by him, enjoyed as a return for his enterprise and outlay these favorable terms in his dealings with the kardar, he usually paid something to the original proprietor of the land in acknowledgment of the latter's superior right, this was generally one topa in the maund or one-fortieth part of the produce.

It is clear from the relation in which these cultivators (if they can be termed such) stood towards the Government representative, whose policy was to make as much out of the land as possible, without too tender a regard for the rights of any who were likely to stand in the way of successfully carrying out that policy, that the proprietor of the soil could exercise little or no control over such cultivator, and the consequence was that the payment of malikana in such cases was looked upon more in the light of a favor than of a right, and it not unfrequently happened that payment was witheld altogether.

From this it will be seen that under the Sikh Government the most favored class of cultivators were men who held a status very little inferior to that of the proprietors themselves, and if this be the case it follows that in according to them as a rule, the position of hereditary cultivators under our revenue system, we have done them no more than bare justice.

II. and III. No reply.

Goojrat District.

T. E. Smyth, Esquire, Assistant Commissioner for Deputy Commissioner.

I, II. and III. The distinction between hereditary and non-hereditary cultivators was neither recognized or known in this district prior to annexation by the British Government. All cultivators were of one class without distinc-

II. Compensation was never given as a general rule. In some parts of the district a "bootamar" cultivator could claim an average rate for cleaning and breaking up of land from its virgin state. The rate never exceeded 2 rupees.

III. No reply.

MOOZUFFURGURH DISTRICT.

Captain Hawes, Officiating Deputy Commissioner.

I. and II. No reply.

III. In this district there is only one description of hereditary cultivators. Previous to annexation they were termed Bootamars (clearers of the bush-wood or jungle) they were put in by the proprietors who received from $2\frac{1}{4}$ to $2\frac{1}{2}$ seers in the maund of the produce as proprietary dues (*lick*); the proprietor could not increase this rent nor could the cultivator or his heirs be ousted so long as they continued to provide for its regular payment.

On the decease of the cultivator without issue, the right to cultivate reverted to the proprietor.

During the life time of the cultivators or his heirs the proprietor had no power of ejection.

DERAJAT DIVISION.

Colonel J. Becher, Commissioner and Superintendent.

I. The original land-lords have often established villages and brought lands under cultivation, by means of parties who were induced to settle under agreements of recognized sub-proprietorship, or on payment of a small annual acknowledgment or tribute to the large proprietor, and these are entitled to be registered as proprietors under our rule (malik-udna).

Many have cut down jungle, and recovered wastes, (Bootamar and Luthband), and have obtained the entire right of ownership by payment of the fee, which has all the validity of the purchase.

Then again, under former rule, from motives of interest or policy, the proprietors (usually men of power and force of will, and often sole rulers of the tract) were set aside, and engagements made direct with the cultivators which may have lasted for half a century, while the right of the real owner has been in abeyance, and when our rule succeeded that of the Sikhs, or of petty Mahomedan chiefs, it seems unjust or impolitic to disturb the existing condition.

II. and III. No reply.

Dera Ismael Khan District.

Major S. F. Graham, Deputy Commissioner.

I. The "Bootamar" and "Luthbund" more resemble the hereditary cultivator of our times, but they are in fact inferior proprietors, and differ little from the "malikudhna," except that they pay no entrance fee, while they differ from the hereditary cultivator in that no period of occupation is necessary to establish their right.

They derive their right either from a superior or inferior proprietor ("malik alla" or "malik adhna"), and pay "malikana" to the former and divide the produce with the latter, whether the recipients be the same or separate individuals.

Their right is heritable but not transferable. They can, like the "Malik adhna" associate others with themselves in the cultivation of their lands.

They may or may not pay the Government revenue, and have or have not accordingly a voice in the audit of the village accounts.

They cannot be ousted from their holdings.

They may plant trees or dig wells *with* the consent of their superiors.

But they cannot break up waste lands, nor have any share in the manorial rights, and the maintenance of their rights rests essentially on the condition of their continued occupancy: if they vacate their lands their right is gone.

In the 6th para. mention has been made of the "malik adhna" being *entitled* to break up, and cultivate waste land, his tenure with regard to such land being that of tenant; this is the only non-proprietary tenure which nearly assimilates with that of "hereditary" cultivator, as introduced under our system, *i. e.*, he is a tenant or non-proprietary cultivator, and he cannot be ousted from his holding as long as he cultivates, and pays the proportion of produce agreed upon to the superior proprietor. But here again the tenure differs from that of our "hereditary" cultivator, in that no period of occupation is necessary to establish the right.

II. and III. No reply.

Dera Ghazee Khan District.

Capt. C. Minchin, Officiating Deputy Commissioner.

I. It was formerly the practice to give to any person who would clear the jungle and bring a tract of waste ground under cultivation a half share of the land, or a portion of the estate according to the capital expended or labor incurred on the work. The same rule held good with regard to the sinking of new wells or repairing old ones.

In these cases proprietor had always the right to eject the cultivator from his own share of the estate, should he wish to appoint another tenant or cultivate it himself.

The only instance in which hereditary cultivators were acknowledged in the sense in which they are now so received, was in the cases of islands in the river, when the cultivators paid the proprietors a rate of 6 topas per 'put' of grain, and themselves paid the Government share of produce, and as long as they carried on these arrangements they could not be ejected out of their holdings. In all other cases the non-proprietary cultivators were mere tenants at will, and could be ejected according to the will and pleasure of the proprietors.

II. and III. No reply.

BUNNOO DISTRICT.

H. B. Urmston, Esqr., Deputy Commissioner.

I. I have the honor to report that previous to British rule non-proprietary cultivators were entirely at the mercy of the owners of the soil, who could eject them whenever they thought right. Hereditary cultivators were quite unknown in those days, nor did long possession entitle the cultivator to any special privileges or consideration at the hand of the proprietors.

II. and III. No reply.

PESHAWUR DIVISION.

Major H. James, Commissioner and Superintendent.

I. I may observe generally that the hereditary cultivator as understood by us did not exist in former times ; the term " Mauroosie" as applied to them is entirely of our own creation. The class from which these have been taken was denominated " fakeers" or " humsayahs," and in this class were included the traders and artizans who settled in a village under the protection of the Puthan brother-hood. This assimilation in name throws some light on the principles which guided the Puthan " dufturee" or proprietor in his transaction with his tenant or humsayah.

II. and III. No reply.

PESHAWUR DISTRICT.

Captain A. Munro, Officiating Deputy Commissioner.

I. Such as may have been longest in possession were (possibly owing to claims rather of long service as dependants than as to the occupancy of the lands) considered to have a sort of prescriptive right to retain their holdings, but they could appeal to no higher law than the arbitrary will of the proprietor or " dufturee," whose " humsayahs" or " fakeers" they were considered to be.

Cultivators were divided into two classes; one being in some places termed " Khookie," or persons from a distance who were permitted as a favor to cultivate within the village bounds ; and the other " Moolkie," whose ancestors were of the village, and who by us would be styled " hereditary." The terms " humsayah " and " fakeer" were also common as already noted.

II. From all I can learn regarding the position of cultivators in the periods prior to annexation, I conclude that the distinction between hereditary and non-hereditary cultivators was not generlly recognized, the proprietor or "dufturee" seems to have possessed the power of ejection without reference to any other authority. The term "Mauroosie" as applied to a mere cultivator was not acknowledged.

III. In cases of ejection, large sums expended in the construction of wells, or upon other works of permanent improvement, were arranged for by arbitration, the outgoing cultivator receiving what might be deemed a fair sum in lieu.

Huzara District.

W. Coxe, Esqr., Deputy Commissioner.

I. I may safely predicate however that, as a general rule, the power of ejection always rests with the proprietor, and this in almost absolute form.

The tenure of non-proprietary cultivators appears to have rested solely on the will of the owner of the land.

II. and III. No reply.

Kohat District.

G. Shortt, Esqr., Offg. Deputy Commissioner.

I. As a rule however the people appear to consider that where a cultivator has been in continuous possession of not less than 40 or 50 years, paying money rates, and being responsible for his share of revenue without respect to gain or loss, that such a person generally termed "Humsayah Towanee" is not liable to be dispossessed of his holding, and his privileges are in all respects the same as a proprietor, except as regards the power of sale or transfer which he does not possess.

In some parts chiefly in the Kutuk Pergunnah entire villages would appear to be held by non-proprietary cultivators, who, while exercising all other proprietary rights are unable to dispose of these lands by sale.

II. and III. No reply.

APPENDIX No. III.

LAND-LORD AND TENANT.

REPLIES FROM NATIVE GENTRY, REVENUE OFFICIALS,
AND AGRICULTURISTS OF ALL CLLASSES,
BEFORE BATTALLA COMMITTEE.

Answers to certain Questions anent the Land-lord and Tenant Question, given by a committee of Native Gentry, Native Officials, and Agriculturists of all classes, assembled at Buttala on the 30th May 1863.

1*st.* *Question.*—Did "*hereditary cultivatorship*" as defined by revenue Codes under British Government exist in this country in any former time?

Proprietors' answer.—It did not exist nor was the name "mauroosee" known. The tenure has been created by the present Government only.

Hereditary cultivators' answer—The system of hereditary cultivation as now established by law did not exist; but wherever a cultivator settled himself he was left undisturbed. No body thought of ousting him, nor was it right by custom to do so.

Opinion of the Committee.—The majority of the Committee concur, and are of opinion, that without doubt the proprietor had the power and right to evict any tenant, but such right was very seldom exercised lest the estate should be under-cultivated.

2*nd.* *Question.*—Had the proprietors the *right to oust* at any time they chose any or all of the cultivators in the village?

Proprietors' answer.—Without doubt the proprietors had the power of evicting any tenant of however long occupancy [one proprietor remarked that it had never been the custom that a tenant who paid the revenue in *cash* should be evicted.]

Tenants' answer.—The opinion of the majority seems to be that a tenant who resides in the village and cultivates, cannot be evicted.

Opinion of the Committee.—The majority of the Committee are of opinion that *however long* a tenant might have resided or cultivated in the village, yet the proprietor if he wanted the land *for his own use*, could eject him; and also if the tenant was disobedient or presuming, no attention would have been paid to complaints of such ejection.

3rd. *Question.*—Is there *any class* of tenants in this country which was entitled by custom to a protected occupancy; if so by what name were they known, what were their privileges, and what circumstances would have constituted a claim to such a tenure.

Proprietors' answer. — Speaking generally there is no such class, but individuals may be found who by some understanding with the land-lord have acquired such a tenure, *e. g.*, a tenant has *agreed* with a land-lord to break up waste land on the condition of getting the land for two years, and after that, paying half produce. [In answer to a question put by Moonshe Kaim Allee, Extra Assistant Commissioner, as to what people would say of a man who ousted a tenant put in by his father or grand-father who had always paid revenue in *cash*, had paid his share of mulba; it was replied, that at present such a man would be thought badly of, wherefore such tenants are not summarily evicted, but *small portions of land are taken* from them, or their *lands* exchanged for others.]

Tenants' answer.—Certainly we have enjoyed a protected occupancy and ought to continue so to do, but we cannot give any particular fact or law which has given us the title.

Opinion of the Committee.—The opinion of the majority is that the tenant should be protected, but we deny that there has ever been any established right to protection claimable, except in cases where an agreement has been written. Where the tenant's father has cultivated before him, or where he has been responsible, like the real proprietor, for the revenue, or where he has broken up waste land, there the claim of the tenant to protected occupancy is strongest. So also in the case of tenants who have paid the revenue in *cash*, and have suffered loss, in cases such as these ordinarily the proprietor is careful to oblige his tenant, or keep on good terms with him, but if a quarrel arise, there is no particular custom by which this could be decided. The case of the "Bootashikafee" tenant would hinge on the particular understanding come to between himself and the Land-lord, and the case of the one who had borne loss, would depend on the amount of such loss to be reimbursed by the parties. The

Committee think that *resident tenants should get a good long notice*, so that they may be able to make some arrangement in case they are evicted, or that a system of payments to tenants as compensation before eviction, should be sanctioned.

4th. Question.—What name was applied *to those tenants* who were liable to be ejected after any harvest by the proprietors; and what to those whom it was not customary to eject; and what difference is there between the two classes?

Proprietors' answer.—There are only two classes of tenants; one those resident in the village called "Asamee" the others those not resident in the village who are called "Paheekasht." The difference between the two classes is, that the proprietor generally has a regard for the resident tenant who has cultivated for a long time, or for generations, and does not oust him except for especial reasons; the "Pahee" on the other hand is ejected whenever the proprietor fancies.—[In reply to a question from Sirdar Jeymul Singh, it was explained that the regard shown to the rights of the first class tenant was dependent on his good behaviour and obedience to land-lord.]

Tenants' answer.—There are only two classes the "Asamee" and the "Pahee," the former is not evicted, the latter is evicted year by year.

Opinion of the Committee.—The general opinion is that there are only two classes, the "Asamee" and the "Pahee." No finer distinction can be made by us if we adhere to custom, nor are names known for such finer shades; and although tenants are found whose occupancy dates from father or grandfather, and who yet live in another village; yet we only consider them "Pahee" and that they have no claim at all upon the land-lord. Those who reside in the village, on the other hand have some claim.

5th. Question.—Did long occupancy confer any right of any kind upon the tenant, or not?

Proprietors' answer.—No right was conferred, but the land-lord was not accustomed to oust such tenants, unless he wanted the land for his own culti-

vation and then only by degrees ; but with the exception of this consideration shown, the tenant remained at the will of the land-lord.

Tenants' answer.—One length of occupancy giving right to protection has never been arbitrarily fixed by custom, occupation since the foundation of the village, or for a long period gives the right as we have before stated.

Opinion of the Committee.—We are agreed in this that mere length of occupancy gives no right.

6*th Question.*—Has a *tenant resident* in the village who has received his tenancy in the *way of inheritance,* that is from his father or grand-father, *any right or not*?

Proprietors' answer.—Certainly such tenancies are inheritable, but with this restriction that the proprietor *may* fairly interrupt the inheritance *if he required the land for his own cultivation;* to interrupt it however for other reasons would be a clear act of injustice, and quite against the custom of the country.

Cultivators' answer.—The son succeeds his father in a tenancy of this kind, but if the proprietor wishes to take the land into his own cultivation *he can interrupt the succession.* [Three or four tenants objected altogether to this doctrine; one said that the proprietor, if he is in want of land, *could take a part of the tenant's only.*]

Opinion of the Committee.—The Committee are agreed that the tenant has a right to succeed to his father, but *with the consent of the proprietor ;* that is, if the tenant quarrels with his land-lord, or is generally perverse, the latter would have the right to bar his succession, but this right is most sparingly exercised. If the proprietor really wants the land *for his own cultivation he may* take it, but to stop the succession of the son on any other grounds, would be considered disgraceful.

7*th Question.*—If there was *any difference between tenants of long* and tenants of *short* occupancy, what was

Proprietors' answer.—We have answered above that there are two kinds of tenants, viz., "Asamees" and "Pahee-

t; that is to say in what respects could the former act independently; and what things were they unable to do without permission of their landlords?

kasht," the latter have no rights, the former have certainly some privileges. 1st they can cut down wild trees for agricultural purposes, not for sale, without the proprietors' permission; but if they want trees for their houses they must ask permission before felling them. Trees which they have themselves planted, they can cut down and sell, but the proprietor will be entited to one-third of the timber or its value: 2nd as regards manure, there is this distinction that the proprietors though entitled to that of (Kumeens) village servants, artizans, &c., cannot take that of the "Asamee," but the latter may not take his manure to another village.

Tenants' answer.—The answers given to this question differ; some of the tenants say that a tenant of long occupancy has the same rights as a proprietor with respect to planting and cutting trees for his own purposes, also that he may without permission of the proprietor cut wild grown trees in his holding, and even sell them. On the other hand some tenants say that the tenant should, with the view of conciliating his land-lord, ask permission before felling trees; and that though he may cut down wild trees without permission for agricultural purposes, yet he should ask leave if he wants them for his house; also that he is altogether disallowed from cutting down to sell. A third party say that trees planted by the tenant may be cut down by him for his own personal use without permission, though not for sale.

Opinion of Committee.—We agree with the reply given by the proprietors, but we make this exception that what they say about the tenant cutting and selling timber he has himself planted and giving the proprietor one-third applies only to groves of trees (jungles) planted in waste land, the tenant has no right to plant or cut in the cultivated land without consent of the proprietor:

he may cut trees planted by himself without asking leave for farm purposes, but not for household purposes, or for sale; and as regards manure the tenant's right is confined to manuring his own fields with it, he cannot take it out of the village, the tenant had no right to *farm out his holding to another* or to *take a friend into partnership* in the farm, that is to say if he paid in grain. If he paid in cash, he *might* in some particular cases take a partner.

8*th Question.*—Can he improve his holding, *i. e.*, can he sink a well or plant trees?

Proprietors' answer.—He can improve the quality of the soil as much as he pleases, but cannot sink a well without leave.

Tenants' answer.—Our answers agree with that of the proprietors.

Committee's opinion.—We agree with the proprietors and tenants.

9*th Question.*—Supposing that formerly the tenant had no *power of sinking wells*, but that now it should appear advisable to give him the power, *what conditions* should be annexed?

Proprietors' answer.—One tenant might be allowed to sink a well if he inscribed the proprietor's name on the title brick, but the option of sinking the well himself should first be offered to the proprietor, the tenant should also be obliged to execute a *written agreement* with the proprietor about the well.

Tenants' answer.—We should be glad to have the power of sinking wells, but we could not agree to put the proprietor's name on the title brick, when we had been at the expense of making the well.

Committee's opinion.—The proprietor's name should be inscribed on the title brick, and the cost of the well should be entered in the written argeement; until this cost was repaid to the tenant, he should hold the well and well land as it were in mortgage, nor should the land-lord be entitled to claim an advance of rent, when the cost of the land had been repaid, the land-lord might claim an increase of rent.

10th *Question.*—Was there ever in former times a class of tenants *who paid in cash*, and were entitled to claim

Proprietors' answer.—There was never formerly any general cash assessment to which we could now re-

to pay in that way, if so when, and under what regime?

fer for example, but if there did happen to be an assessment, the government made no contract with the tenants, we the proprietors fixed their rents *in grain or in cash*, as we thought proper.

Tenants' answer.—Whenever there was a cash assessment in past times the custom was, that the resident tenants paid in cash like the proprietors, but the "Paheekasht" paid in grain.

Committee's opinion.—There was *no* class of tenants *entitled to pay in cash* except by agreement with the proprietor, nor shoud any be allowed to pay in cash now, except extortion be proved against the land-lord, or except the tenant has long paid in cash. In former days cash assessments were not the custom, so very few cultivators will be found who paid in cash before the British regime, and nine years we think would be a fair term to fix within which the proprietors should be unable to raise his rents; some of us however say ten years.

12th *Question*.—What has been the custom hitherto as regards *eviction of tenants*, that is *when* can they be evicted? for the future what custom should be kept to in the matter?

Proprietors' answer.—The majority are of opinion that the "Paheekasht" tenant should not be evicted except at the end of the year, and that some notice should be given to the resident tenant, and then that he should *not be evicted at once from his whole holding*, as that has never been the custom. We think 4 years might be fixed as the term within which total eviction should be prohibited; in those four years the tenant would be gradually evicted, losing one-fourth of his holding every year.

Tenants' answer.—The proprietors have no power of evicting us, nor used they to take our land from us.

Committee's opinion.—Many of us are of the same opinion as the proprietors, and think that their proposal of 4 years *gradual eviction is a fair one*: other members of the Committee think that the proprietors can evict at once.

12*th Question.*—Did the custom of taking rent ("Malikana") exist in this country? If so, what was the mode of taking it? And if there were more than one, describe them all?

Proprietors' answer.—Two seers on the maund of gross produce was the "Malikana" taken.

Tenants' answer.—One seer per maund on gross produce.

Committee's opinion.—Two seers on the maund of gross produce, and 1 anna in the rupee on zubtee.

13*th Question.*—At what percentage should rent (Malikana) be calculated on the present Government revenue, so as to ensure the land-lord his proper share of the profits and yet not distress the tenant?

Proprietors' answer.—We should get 20 per cent "Malikana" exclusive of the items of village expenses, mulba, and cesses for road, putwaree, school, &c., and in case the tenants pay in grain, we should get 5 seers on the maund, and 2 annas in the rupee on the best crops (zubtee).

Tenants' answer.—We cannot pay more than 5 per cent "Malikana" *cash* rents, or one seer on the maund, or grain rents.

Committee's opinion.—We are generally agreed upon the following rates, viz., on "Butai" 5 seers per maund, and 2 annas in the rupee on "zubtee" —In the case of cash payments 20 or even 30 per cent on Jumma rates as a *maximum* exclusive of "Mulba"; that is to say the proprietor would pay "Mulba" himself.

14*th Question.*—Was it ever the custom that *written agreements* were made between Land-lord and Tenant, and if not how could the custom be now introduced?

Proprietors' answer.—Hitherto verbal agreements made before witnesses have been in vogue, for the future written agreements should be adopted; but before Government gives orders that verbal agreements should be disregarded by its officers, it should give 3 years' notice.

The Committee and the Tenants.—Agree with what has been said and suggested by the proprietors.

15*th Question.*—Supposing the case of a land-lord who has very little land and wants to take into his own cultivation the land of a tenant who has cultivated for three or four generations, (i. e., whose tenancy has descended to him from ancestors in the 3rd or 4th generation) and who has been declar-

Proprietors' answer.—We should give him nothing but the grace which we before proposed, that is a *gradual* instead of a sudden eviction.

Tenants' answer.—If evicted we should certainly get compensation, (some said at the rate of Rs. 10 the goomao).

ed a hereditary cultivator, can he evict such a tenant? And if the tenant has *improved* the quality of the land, ought he not to first get compensation, or ought he to get some protection from eviction; or is there any other due which should be awarded to him?

Committee's opinion.—After considerable discussion the committee agree that compensation should be given, as the tenant will have to leave the village and pay fees (Nuzzurana) before he is admitted to another holding, also with a view to the cost of feeding his cattle and making new arrangements of all kinds; also because proposed power of eviction is a more absolute one than ever prevailed in Sikh times.

The tenant should be allowed to retain his house if it be in the village-site (abadee), if the proprietor take it he would give compensation, also he would pay full compensation for actual standing improvements to the estate, such as valuable trees, farm buildings.

16th Question.—Say that one *proprietor cultivates the land of another proprietor of* the same village proprietary clan, can he under any circumstances acquire a right of permanent tenancy? What is his status?

Proprietors' answer.—He can never be anything but a *tenant at will* of such land. Some such tenancies were made hereditary at last settlement, but should now be changed into tenancies at will.

Committee's opinion.—We fully agree with the proprietors that it is straight *against the custom of the country* that one member of a brotherhood should be allowed to acquire a *permanent tenancy* in the land of another.

17th Question.—Say that the tenant is not of the same clan as the village proprietors, but that he is *of a caste which generally owns* land, and that he has settled in the village and grounds, being some proprietor's *daughter's* son, or some proprietor having invited him to *become his partner* (Bhaiwal), has such a tenant any rights which would entitle him to protection?

Proprietors' answer.—We are generally agreed that in the case of a daughter's son, as long as his maternal grandfather is alive, he is entirely subject to the will of such grandfather, but that whoever succeeds the grandfather as proprietor *should not evict him.*

Committee's opinion.—We agree entirely with the proprietors.

APPENDIX No. IV.

LAND-LORD AND TENANT.

REPLIES FROM NATIVE GENTRY, REVENUE OFFICIALS,
AND AGRICULTURISTS OF ALL CLASSES,
BEFORE AMRITSUR COMMITTEE.

Answers to certain questions anent the Land-lord and Tenant question, given by and before a committee of native gentry, revenue officials, and agriculturists of all classes, assembled at Amritsur on the 14th June 1863.

1*st Question*.—Did hereditary cultivatorship as defined by Revenue Codes under British Government exist in this country in any former time?

Proprietors' answer.—The institution called by Government hereditary tenancy did not exist in our country, till it was introduced in the British regime.

Tenants' answer.—The majority of us agree that "hereditary cultivatorship" has existed only since annexation: in former days the cultivators and proprietors were both on the same footing: in former days the Government made whom it liked proprietor or tenant.

Committee's opinion.—The class of hereditary cultivators did *not exist* before the annexation, nor was the word "Mauroosie" known.

2*nd Question*.—Had the proprietors a *right* to *oust*, at any time they chose, any or all, of the cultivators in the village?

Proprietors' answer.—We agree with the opinion of the Committee given below.

Tenants' answer.—It was never the custom that we were subject to summary ejectment (some of the tenants went further than this, but none could refer to any particular obstacle, which existed to their eviction.)

Opinion of the Committee. We are agreed that the tenant *could be ejected* from his fields, but not from the village.

3*rd Question*.—Is there any class of tenants in this country which was entitled by custom to a protected occupancy, if so, by what name were they known, what were their privileges, and what circumstances would have constituted a claim to such a tenure?

Proprietors' answer.—There was no custom so strong as to give a right to cultivate, there was however a difference made between resident and nonresidents tenants, which took the form of a more lenient rent, not of any protection from eviction. No consideration was shown at all to non-resideut

tenants, but the resident tenant got rates a rupee or so lighter on the consideration that he performed other services also. Tenants who cleared waste land on river side villages got light rents.

Tenants' answer.—Two tenants replied that a tenant who *cleared waste lands* certainly acquired a right to cultivate, or if the right to evict existed, it was never used. One tenant replied that the clearing of waste land gave a special right to protection from eviction, but even then such right would only avail against another cultivator, not against the proprietor himself.

Committee's opinion.—We agree with the opinion given by the proprietors.

4*th Question.*—What name was applied to *those tenants* who were liable to *be ejected* after any harvest by the proprietors, and what to those whom it was not customary to eject, and what difference is there between the two classes?

Proprietors' answer.—Two classes of tenants existed, viz: *the* "*Paheekast*" or non-resident, and the "*Asamee*" or resident tenant.

Tenants' answer.—Only two classes of tenants existed, the "Paheekasht" and tbe resident tenant (Asamee deh.)

Committee's opinion.—We agree with the proprietors.

5*th Question.*—Did *long occupancy confer any right of any kind* upon the tenant, or not?

Proprietors' answer.—It conferred no right.

Tenants' answer.—Formerly the proprietors did not evict us if we were to have gone to the Kardar or complained of eviction we should certainly have got redress.

Committee's opinion.—We agree with the proprietors.

6*th Question.*—Has a *tenant resident* in the village who has received his tenancy in the *way of inheritance*, that is from his father or grand-father, *any right or not?*

This question has been answered above.

7*th Question.*—If there was any *difference between tenants of long* and tenants of *short* occupancy, what was it, that is to say in what respects

Proprietors' answer.—There was no great distinction formerly between the two classes of tenants however the "*Paheekasht*" certainly had no

could the former act independently; and what things were they unable to do without permission of their landlords?

rights of any kind, the resident tenant had no right of selling or mortgaging his holding, but if he went away on a journey or pilgrimage he could entrust it temporarily. He could plant trees, but not cut them without permission, he could not build a house at the well where he cultivated without permission, he could use his manure for his own fields in the village, but could not take it out of the village.

Tenants' answer.—The Paheekasht had no rights, the resident tenants had the rights detailed above by the proprietors, with this addition that we consider the tenant *could cut trees* for *his personal use* and also build a house at the well without permission, the house too that he occupied on the village site was his to do what he liked with, but he could not enlarge the yard of it without permission.

Opinion of Committee.—We agree with the proprietors as to the privileges of resident tenants.

8th Question.—Can the tenant improve his holding, *i. e.*, can he sink a well, or plant trees?

This has been answered above under No. 7.

9th Question.—Supposing that formerly the tenant had no *power of sinking wells*, but that now it should appear advisable to give him the power *what conditions* should be annexed?

Proprietors' answer.—We are utterly opposed to the tenant being empowered to sink a well, unless he puts the proprietor's name on the title-brick, or signs a written agreement with the proprietor to prevent the possibility of the latter ever losing his rights of property.

Committee's opinion.—We agree that the objections of the proprietors are good ones; if the well be sunk with money borrowed from the cultivator by the proprietor, there we see no objection, but if the tenant alone sink the well disputes will afterwards arise.

10th Question.—Was there ever in former times a class of tenants *who paid in cash, and* were entitled to

Proprietors' answer.—There was a class of tenants who paid in cash, and were called "Chuhas," but they

claim to pay in that way, if so when, and under what regime.

were at the mercy of the proprietors, they had taken the contract from the proprietors, not from the Government or Jagheerdar. The proprietors could raise or lower the tenants' assessments: the village assessment was made with proprietors only.

Tenants' answer.—There was a class of "Chuhas" or contracting tenants, who contracted with Government. The plan was that the crops were appraised by *kunkoot,* and then a cash jumma found by application of price current: this cash jumma was then realized from proprietors and tenants alike.

Committee's opinion.—Formerly tenants who paid in cash were rare, grain collection or "kunkoot" was the rule; instances of contracting tenants did occur. The custom of kunkoot converted into cash prevailed sometimes, in which case the cash was realized alike from proprietors and tenants, but this gave the *tenant no claim* to pay always *in cash against the will of the proprietors.*

11*th Question.*—What has been the custom hitherto as regards *eviction of tenants,* that is *when* can they be evicted: *for the future what custom* should be looked to in the matter?

Proprietors' answer.—As regards eviction the same rule prevailed for both the "Paheekhast" and resident tenant, viz: they were evictable at the end of Cheyt.

Tenants' answer.—Same as that of the proprietors.

Committee's opinion.—We agree with the proprietors.

12*th Question.*—Did the *custom of taking rent* ("Malikana") exist in this country? if so, what was the mode of taking it? and if there were more modes than one, describe them all?

Proprietors' answer.—The custom of taking rent did exist, and was called "Biswee" or "Malikee." The nature of the fee differed in different parts of the country, one practice was for the proprietor to take one pahee measure per maund as his own fee out of the Government share paid by the tenant. A kunal of green fodder was also taken at each harvest from each well by the proprietor. "Biswee" was also taken in cash on the "Zubtee" collections in the form of an extra charge.

Committee's opinion.—The custom of "Malikana" certainly prevailed, but the modes of collection were various. When the Government share was $\frac{1}{2}$ gross produce it was the custom to charge the tenant also with "Mulba" or Siwaee; then he paid no "Biswee;" but if the Government demand was less then $\frac{1}{2}$ then "Biswee" was taken at different rates.

13*th Question.*—At *what percentage should rent* ("Malikana") be calculated on the present Government revenue, so as to ensure the land-lord his proper share of the profits and yet not distress the tenant?

Committee's opinion.—If the tenant pay in cash we would make him pay from $12\frac{1}{2}$ minimum to 18 per cent. maximum, he would also give fodder according to the village custom. If the liability of supplying fodder be excused to him we would fix the maximum at 20 per cent. If the tenant pay in grain, the "malikana" should be calculated at the same rate.

14*th Question.*—Was it ever the custom that *written agreements* were made between land-lord and tenant, and if not how could the custom be now introduced?

Committee's opinion.—Written engagements between land-lord and tenant have hitherto been excessively rare; they might be now introduced with great advantage, but if it be contemplated to forbid the Courts taking notice of verbal agreements, 3 years' notice should be given.

15*th Question.*—Supposing the case of a land-lord who has very little land and wants to take into his cultivation the land of tenant who has cultivated for 3 or 4 generations, (i. e., whose tenancy has descended to him from ancestors in the 3rd or 4th generation) and who has been declared a "hereditary cultivator," can he evict such a tenant? and if the tenant has *improved* the quality of the land, ought he not to first get compensation, or ought he to get some protection from eviction, or is there any other due which should be awarded to him?

Committee's opinion.—We have answered this question before: improvement by the tenant of quality of soil would not be a good plea against ejection, nor would he be entitled to any compensation on that account by the custom of the country.

16*th Question.*—Say that one *proprietor cultivates the land of another proprietor* of the same village proprietary clan, can he under any circumstances acquire a right of permanent tenancy; what is his status?

Committee's opinion.—We are of opinion that such persons are merely cultivators "at will" and cannot acquire a permanent occupancy *as tenants*, though of course they can go in and claim actual ownership.

17th Question.—Say that the tenant is not of the same clan as the village proprietors, but that he is *of a caste which generally owns* land, and that he has settled in the village and been admitted to cultivation on the grounds of being some proprietor's *daughter's son*, or of some proprietor having invited him to *become his partner* ("Bhaiwal"), has such a tenant any right which would entitle him to protection?

Committee's opinion.—We agree that he cannot be turned out of his house, but differ as to his rights to the land, or to a protected occupancy: some say that when he succeeded to his mother's father's house, he practically succeeded to all his property including the land. Some say that he should continue to cultivate independently; others that he should be in subjection to the proprietor, or that if he has any claim it must be to *proprietorship,* not to a protected tenancy. All the proprietors however agree that to turn out of his holding a son-in-law on the death of his maternal grand-father would be harsh and wrong. We; the committee, therefore have come to this conclusion, with the propoietors, that a grace of 5 years should always be given to a daughter's son recorded before eviction; he would be required however to pay "malikana."

APPENDIX No. V.

LAND-LORD AND TENANT.

REPLIES FROM NATIVE REVENUE OFFICERS, EXTRA ASSISTANT COMMISSIONERS, &c.

Answers received from the following Native Revenue officials to certain questions relative to the Land-lord and Tenant question, addressed to them by Commissioner of Settlements:—

1st. *Question.—Did hereditary cultivatorship* as defined by Revenue Codes under British Government exist in this country in any former time?

Kaim Allee, 1st class Extra Assistant Commissioner, Goordaspoor District.—The word "*Mouroosee*" was not used. In many places cultivators who had held for a long time, and who resided in the village, were termed Kademee."

Jaishee Ram, 1st class Extra Assistant Commissioner of Amritsur District.—I wish to know first what meaning is attached to the word "*Mouroosee*" in the question : are those tenants alluded to whose grandfathers and fathers have cultivated before them, or does it allude to a state of tenancy like that established by English law in the North Western Provinces. Certainly hereditary tenants of the former kind exist in the Punjab, but they were never considered on a level with the proprietors, nor when the proprietors wished to get rid of them, were they prohibited altogether from ejecting them.

Byj Nath, Extra Assistant Commissioner of Lahore, son of Dewan Ajoodyanath.—Formerly no one ever used the term "*Mouroosee*" for a tenant, nor has the present positions of such hereditary tenants ever prevailed before.

Shunkur Dass, Tekseeldar of Goordaspoor, once in office of Raja Deena Nath.—Hereditary tenancy never existed in the Punjab as defined by the law courts.

Nand Lall, Tehseeldar of Shukurgurh.—No such a thing as "hereditary tenancy" in the official acceptation ever existed. Such is the universal statement of the people of these parts, and inquiry confirms what they say.

2nd. Question.—Had the proprietors the *right to oust* at any time they chose, any or all of the cultivators in the village?

Kaim Allee, 1st class Extra Assistant Commissioner, Goordaspoor District.—Tenants residents of the village who had cultivated for a very long time, and had paid losses, who had reclaimed the land they held from waste, such could not be ejected merely at the will of the proprietor.

Jaishee Ram, 1st class Extra Assistant Commissioner, of Amritsur District.—Before this question can be well answered, and the present state of affairs understood, it is necessary to recall the history of past times, beginning with that of Rajpoot ascendancy, going into that of Mahomedan rule, and finally to the overthrow of the latter on the rise of Sikh rule. In Rajpoot villages which have stood the shock of all these revolutions, the position of tenants will generally be found to be that of *complete subordination to the proprietors,* so also in villages held by the better classes of Mahomedans; where also a strong brotherhood of Juts or other zemindars held a village, the tenants if any were generally *liable to be summarily ejected.* Where the community was composed of men of different castes and ordinarily all were on a level, that is no one could turn out another. When a village was in the lands of of a jagheerdar no cultivator could resist being ejected by him. Kardars also had nearly absolute power. In their Ilakas they looked generally to the amount to be obtained from the village, and opposed the eviction of cultivators who paid, there was no law on the subject; but a Kardar when appealed to, would often say a man had been harshly ejected and put him back again. Government contractors of revenue often had the same powers as Kardars, and exercised them in the same way, when the eviction had been made by a Jagheerdar or even Ghoorchurra they would not dare to interfere.

Byj Nath, Extra Assistant Commissioner of Lahore, son of Dewan Ajodyanath.—A tenant put in to cultivate land that had been cultivated

before *could at any time be ejected* by the proprietors.

Shunkar Dass, Tehseeldar of Goordaspoor, once in office of Raja Deena Nath.—In the Sikh time as the tenant paid by kunkoot the wish to eject him did not arise; the proprietor if he wanted the land or any part for himself was in the habit of taking it, or if the tenant disobeyed him, or neglected cultivation, he was ejected.

Nund Lall, Teseeldar of Shukurgurh.—As long as the tenants paid their revenue and rent they were not ejected, if they failed in payments they were ejected even from the house in which they had been residing.

3rd Question.—Is there any class of tenants in this country which was entitled by custom to a protected occupancy, if so by what name were their privileges and what circumstances would have constituted a claim to such a tenure?

Kaim Allee, 1st class Extra Assistant Commissioner, Goordaspoor District.—Where the proprietors were numerous, there was no need of cultivators—where they were few and weak, the village was mainly kept up by them. In the latter class of villages sometimes the proprietor, sometimes the jagheerdar put in the tenants; sometimes the (for the time) ruler of the country. Such tenants could never be ejected by the proprietor. They were always protected by the rulers for the time being. They were not known by any particular name. Their right was founded on the consideration that they had mainly supported the burden of the revenue, that they had borne loss with the proprietors, perhaps first cleared the land they held, left their own to come to live in a half ruined village. Such tenants were always protected from ejection, their trees could not be cut or their manure taken by the proprietor. Sometimes even plots of land were given them free of revenue as an encouragement.

Jaishee Ram, 1st class Extra Assistant Commissioner, Amristsur District.—In the Sikh times the question did not arise as to the respective rights of the two classes of proprietors and cultivators. Rights were no where

clearly defined or established. I have written above that we certainly find in the Punjab a species of tenancy from father to son. It is extremely probabable that this tenancy must have been protected by the rulers of the time, or how should it have survived so long. I am asked what is its name? I don't believe it has any. The fact is, in past times no one took the trouble to search into fine points of right, so no name was necessary. I believe that the names now given by the zemindars and others are not genuine names of such classes. In old Sikh Khusrehs in a Rundhawa village, you will find Rundhawa, Goojur, Gill, all entered one after the other, with no distinctive title to show status. I am sure that excepting "Pahees" no other class of cultivator was sufficiently distinct to receive a name. "Zemindar" was a common title for all having anything to do with land. Tenants holding from 4 or 5 generations were as a rule not ejected, but they were not aware of any law positively depriving the proprietor of the right of so doing, so they were civil and obedient; the proprietors on their part did not wish to eject them. Sometimes however a violent proprietor would eject such a tenant, but it is difficult to say whether such an act was one of right or of might only. I conclude that there *was* a class of hereditary tenants who deserved and got a protected occupancy, and who still deserves to get it. I think cultivators of those times might be classed as follows :

1*st.* "*Paheekasht,*" "*Pahoo*" men attached to no particular land or proprietor, who go year by year into villages and cultivate either in the pay of a jagheerdar or proprietor.

2*nd.* "*Asamee,*" e. g., a Raien put in by a Rundhawa propeietor to cultivate the land watered by his well. Such a man has never been supposed to be anything but *completely at the will of the proprietor*.

3*rd.* A man who cultivates a part of "Shamilat" in the land of an absconded proprietor, and pays the pro-

prietor in grain whether the cultivator be of the village stock or not.

4*th.* Sometimes you find a body of men, say *Doggurs, Juts, Raeens,* cultivating in a village with fields separate from those of the proprietor, having a recognized head-man of their own, yet not proprietors.

5*th.* Sometimes a maafeedar has taken to cultivate his maafee.

6*th.* Sometimes a jagheerdar will have so dispossessed by a long series of exactions the proprietors, that they are found with no right left but that of cultivation.

No need to speak of (1) "Pahoo."—As regards class 2, I think they never had any rights of permanent occupancy : class 3, had great protection without doubt, they used to cut trees for their own requirements, build good houses, have their own dung heaps, and yet they were not at all on an equal footing with the proprietors. Class 4. These men were in fact on an equal footing with the proprietors, except that they could not sell or mortgage, and had no share in Shamilat. Class 5, equal to a proprietor as far as regards his own maafee, and if he had held it long, able even to transfer it. Class 6, cultivators of this class, i. e., dispossessed proprietors, were on the same footing as cultivators of the 3rd class described above. The 4th, 5th, and 6th classes deserve protection. In past times there was little difference between the status of cultivator and proprietor ; little distinction of right was made between them. It would be hardly fair now that one class should reap all the advantage of the great improvement of agricultural prosperities under a settled Government.

Byjnath, Extra Assistant Commissioner of Lahore, son of Dewan Adjodyanath.—Tenants put into occupancy of cultivated land never acquired any right of permanent occupancy. Others who cleared waste

land, brought it into cultivation without receipt of payment for their labour, became in virtue thereof proprietors of their holdings, but not tenants having a privileged occupancy.

Shunkur Dass, Tehseeldar of Goordaspoor, once in office of Raja Dena Nath.—No name but "*Asamee.*" No cultivator had a right of occupancy. Any who supported a tottering weak village got protection from the country.

Nund Lall, Tehseeldar, Shukurgurh. Cultivators whose occupancy was ancient and who resided in the village were a little favored at the "kunkoot," no other protection was shown them, no other name for them but "*Asamee,*" Cultivators non-residents paid a little more.

4th Question.—What *name* was applied *to those tenants* who were liable to be ejected after any harvest by the proprietors, and what to those whom it was not customary to eject, and what difference is there between the two clases.

Kaim Allee.—Those tenants who were liable to ejectment after *any* harvest were called "*Paheekasht,*" and were residents of other villages. There is no specific name for the other class, but they are called old tenants of the village ("*Purana Asamee*"). The difference between the two classes was this, that the former had no interest in the village, but a temporary one in the fields they occupied ; the latter had trees, sugar-presses, dung heaps, &c., in which the proprietors had no lord-ship of any kind.

Jaishee Ram.—I have answered this question in my reply to No. 3.

Byjnath.—Formerly two classes of cultivators or tenants did not exist in the Punjab. Those who were liable to the most summary ejectment, and those to whom would have been granted some considerable notice were alike known as "Bhowlya," (i. e., one who pays butai in grain rates).

Shunkur Dass.—In case the proprietor wanted the land he could eject any tenant from it. Only two classes of tenants were known, one, those resident in the village, the other those non-residents, the latter were called "*Paheekasht.*"

Nund Lall.—In past times no distinction of name was known between the old or new resident tenant, nor was any difference required in their treatment. As long as the tenant was honest and the land-lord satisfied he was not ejected. If he, the tenant, misbehaved, he was turned out.

5*th Question.*—Did long possession confer any right of any kind upon the tenant or not?

Kaim Allee.—Old tenants may be divided into two classes, viz., (1) those who asked for and got the cultivation of the land *as a favour*, and (2) those whom the land-lords for their own profit put in. The former always remained altogether at *the will of the proprietor*, the latter were almost independent; indeed I have found them quite on a level with the proprietors.

Jaishee Ram.—Without doubt long occupancy *did confer* a right; when any such tenant was ejected it was considered an act of injustice in former times, as much as it would be at present.

Byj Nath.—Tenants put in to cultivate land already under cultivation, never by the custom of the country acquired any hereditary right of cultivation, no matter how many generations they had been in occupancy.

Shunkar Dass.—The class of hereditary tenants were created at settlement by English law. Such a class was not formerly known in the Punjab: never been supposed to be any thing but *completely at the will of the proprietor.*

Nund Lall.—I learn from all classes that long occupancy conferred no right. All the distinctions of tenant-at-will, hereditary tenant, &c., were created by the English.

6*th Question.*—Has a *tenant resident* in the village who has received his tenancy in the *way of inheritance,* that is from his father or grandfather, *any right or not?*

Kaim Allee.—He remains in possession of the land he has cultivated, the trees he has planted, his sugar-press and dung heap, &c., but so long as he honestly pays the land-lord his dues.

Jaishee Ram.—Certainly long occupancy was supposed to confer a

right, such tenants were never summarily ejected. There was no fixed or written law in the matter, nor was it ever expected that the tenant should acquire a legal right of occupancy: still a right did exist when an old tenant of the kind was ejected. One zemindar acting as a punch would tell the other that the cultivator had been put in by his father or grandfather and that he and done wrong in ejecting him, the consequence would be that the tenant would recover his occupancy.

Byj Nath.—Tenants of short or long occupancy were alike *at the will* of their land-lord; both occupied the position now held by the tenant-at-will.

Shunkur Dass.– Such a tenant has no rights. Can be ejected.

Nund Lall.—All classes tell me that in past times such a tenant had no rights of occupancy.

7th Question.—If there was *any difference between tenants of long* and tenants of *short* occupancy, what is it; that is to say, in what respects could the former act independently; and what things were they unable to do without permission of their land-lords.

Kaim Allee.—The tenant with *short* term of occupancy had no rights, the long termed tenant could cut down trees in his fields, or on his premises, but as regards trees in the fields his right of cutting only lasted as long as he continued to pay rent to the proprietors for those fields.

Jaishee Ram.—I have described the different classes of cultivators above. "Paheekasht," &c. had no rights. Old village resident cultivators *could* sink wells with the consent of the proprietors, and sometimes, though very rarely, they did so, by virtue of permission from the rulers for the time being.

Byj Nath.—Tenants, whether of long or short standing, if the land was not first broken up by themselves, had no distinctive rights; both were unable to act at all independently of the proprietor.

Shunkur Dass.—I know only this difference between the old tenant and the new non-resident tenant, that the former could cut boughs off the tree without consent of the proprietor;

perhaps he might plant a few trees in a murla (rood), or so of land, without asking permission. On the other hand, the latter could do nothing without permission.

Nund Lall.—I ascertain from the statements of classes that there was no class of tenants possessed of superior rights. If a tenant by permission of the proprietor had sunk a well, and afterwards quarrelled with his landlord, the latter could *eject him* after paying him the cost of the well. The power of selling or mortgaging trees remained entirely with the proprietor.

8*th Question.*—Can the tenant *improve* his holding, i. e., can he sink a well, or plant trees ?

Kaim Allee.—He could plant trees in land for which he paid rent, provided that the proprietor did not think his so doing would impair the productiveness of the land. He could not sink a well.

Jaishee Ram.—He could plant trees, not sink wells.

Byj Nath.—He could neither plant trees nor sink wells.

Shunkur Dass.—He could improve his holding by manuring, or ploughing, but could not plant trees or sink wells without permission of proprietors.

Nund Lall.—He could neither plant trees nor sink wells.

9*th Question.*—Supposing that formerly the tenant had no *power of sinking wells*, but that now it should appear advisable to give him the power, *what conditions* should be annexed ?

Kaim Allee.—If the power of eviction be not given to the proprietors, and if the cultivator be first compelled to bind himself not to claim proprietorship, I should not be surprised to see the cultivators sink wells and the landlord refrain from objecting.

Jaishee Ram.—I would suggest that a general permission be given to cultivators to sink wells with consent of their land-lords. The conditions would be these, viz., a water rate would be fixed for each purgunnah or part of a purgunnah. This the cultivator who had sunk the well would be entitled to take from

the land he cultivated. If he quarrelled with his land-lord he could not be ejected until the cost of the well had been repaid. Cultivators of the 3rd, 4th and 6th classes, as defined in one of my former answers, ought to be allowed to sink wells on these conditions, with or without the permission of proprietors.

Byj Nath.—The reason for refusing the tenant the authority to sink wells is that by having done so he becomes apparently a proprietor.

Shunkur Dass.—I consider that the tenant might now be allowed to sink wells on condition of his putting the land-lord's name on the titlebrick. The proprietor would remain at liberty to eject the tenant after paying him the cost of the well. Half the increased profit caused by the well ought to go to the proprietor and half to the cultivator. The proprietor would not be at liberty himself to raise the rent.

Nund Lall.—No new power of sinking wells should be given. If they sink wells they should not be held to be proprietors of such wells.

10*th Question.*—Was there ever in former times a class of tenants *who paid in cash,* and were entitled to claim to pay in that way, if so when, and under what regime ?

Kaim Allee.—When a village was assessed at a fixed sum in *cash,* such of the cultivators as held by something approaching to a regular tenure, not merely from one harvest to another, were often made to pay their rents in cash. In Sumbut 1899, when a cash jumma was assessed, this was the case, e. g., in the village of Jhetoo Singh, Ruttun Singh, Golab Singh. Lohars have ever since then paid cash. Numerous other examples could be given.

Jaishee Ram.—No such custom of paying rents in cash is to be heard of, but it should be remembered that the rents paid in grain in the Sikh times were most excessive, so that the cultivators should not lose consideration because they paid in grain.

Byj Nath.—Formerly there were tenants who paid in cash, but such tenants always got a "*putta*" and gave a "*kabooleat*;" at the expiry of

term of the putta, the landlord could evict them, or turn their rents into grain.

Shunkur Dass.—There was never a cash assessment in this part of the country, till one was imposed in Sumbut 1890 by General Avitable. The proprietors then took cash rents from their old resident tenants, and grain rents from the "*Paheekast*" tenants. If the resident tenants refused to pay cash, they could pay in grain.

Nund Lall.—In this Pergunnah (Shukurgurh) no tenant ever paid in cash in former days.

11*th Question.*—What has been the custom hitherto as regards *eviction of tenants*, that is, *when* can they be evicted; *for the future what custom* should be kept to in the matter?

Kaim Allee.—For the autumn harvest in *Magh*, and for the spring in *Jhet*. This the custom, and it should be adhered to.

Jaishee Ram.—Ejectments took place at the end of the Fuslee year, and should continue to be so.

Byj Nath.—Formerly the custom was to eject in the month of *Har* at the beginning of the Fuslee year. If an ejectment was made in the middle of the year the cost of standing crops had to be paid. The same custom, viz: that of ejectment in *Har*, should be maintained.

Shunkur Dass.—The custom here is that the proprietor gives notice to his tenant *Mungsir*, because in that month preparations for planting sugar cane are made. The tenant then at once looks about for other land to plant cane in, meanwhile he remains in possession of the other land till *Jhet*, when he turns out. It is not the custom to eject a tenant from a field of sugar cane, if he, after cutting the first crop let the roots stand on for the second crop. But, if he ploughs up the roots he is then liable to ejectment. This custom should be maintained.

Nund Lall.—Ejectments were made after either crop had been harvested; the custom should remain the same.

12*th Question*.—Did the *custom of taking rent* (" malikana") exist in this country? If so, what was the mode of taking it? And if there were more modes than one describe them all?

Kaim Allee.—There was no general custom of taking " malikana," when the land-lord wanted to settle down his tenants he took none, what is more, he often gave them little plots rent-free, and reduced their share of the village expenses. Often however " malikana" was paid at the rate of 1 or 2 seers, per maund when rents were in kind, and at rate of 1 or 2 rupees on the zubtee.

Jaishee Ram.—The custom of " malikana" payments certainly existed. The word was understood. It generally consisted of 2 seers per maund on grain rents, &c : cash rate per kunal on zubtee payments, but there is an element of perplexity in the matter, that we find the same items collected from the proprietors themselves, by the Jageerdars, Mafeedar, or even the Zemindars who had become contractors for the revenue. In fact the item was, as it were, the fee of the collection. However this custom of " malikana" payments was certainly not a general one. It was in force only in villages where the proprietors were powerful, and of a superior class. The collection of " buttae" generally took the extra items from non-proprietors at a higher rate than from the proprietors. This was as it were a payment of " malikana" to the proprietors.

Byj Nath.—The custom of taking " malikana" prevailed in this country when the tenant paid the Government revenue direct to the Government collector of butai. The rate was one-sixth or one-sixteenth share of grain, or 1 topa per 'manee' on jumma on the zubtee.

Shunkur Dass.—" Malikana" was called " biswee" in this country. It was either 2 seers per maund, or 1 topa per manee. In the 'Andur' country it was taken at the rate of 5 seers per maund on the Government demand, or at the rate of 1 pahee measure on the manee, or 1 'dhurie,' i. e., 10 seers, on the maund if the grain was weighed.

Nund Lall.—The custom prevailed in this part of the country. One custom was, say that if 20 ' mun' was total produce, to deduct 4 mun, leaving 16 mun, of which to take over above 8 mun, the proper half share, 2 mun more, making 10 mun in all. Another custom was first to measure off, from whole produce, six and three-fourths pahee per maund (out of this 5 pahee went to malikana, the rest to village servants) and then to take the half share remaining.

13th *Question.—At what per centage should rent* ("malikana") be calculated on the present Government revenue, so as to ensure the land-lord his proper share of the profits and yet not distress the tenant?

Kaim Allee.—Rents differ with the quality of the soil. I think the "malikana" should never be at a higher rate than 40 per cent, or including extra cesses 50 per cent above the Government revenue.

Jaishee Ram.—No answer.

Byj Nath.—I think "malikana" should ordinarily be at 25 per cent. If the land be poor at a lower, or at the customary rate if there be one.

Shunkur Dass.—I think the malikana should be at the rate of 25 per cent. on the Government demand.

Nund Lall.—I think "malikana" should range from 2 annas per rupee to 5 annas per rupee on the Government revenue.

14th *Question.*—(Connected with the question of puttas omitted, as having nothing to do with the question of land-lord and tenant right)?

15th *Question.*—Supposing the case of a *land-lord who has very little land, and wants to take into his own cultivation* the land of a tenant who has cultivated for 3 or 4 generations, (*i. e.*, whose tenancy has descended to him from ancestors in 3rd or 4th generation) and who has been declared a "hereditary cultivator," can he evict such a tenant, and if the tenant has improved the quality of the land ought be not to first get compensation, or ought he to get some protec-

Kaim Allee.—If the proprietor has no land in his own possession, then he ought to be able to eject the cultivator of whatever class he may be, but it would not be fair that the tenant should be ejected from the whole of his holding. Improvement of the soil should confer no right on the tenant.

Jaishee Ram.—(The answer in the original is very long in the translation, so the gist of it is taken and given here). I think it would not be equi-

tion from eviction; or is there any other due which should be awarded him?

table to allow the hereditary tenant that is so recorded to be evicted. I would propose a valuation being made for every Chuk or Talooqua of tenant lands, and a price for each kind of land fixed. Say that the price was fixed at Rs. 100, the tenant's share of this would then be calculated in the following way, viz., they, the tenants would be divided into classes according to the length of their tenures. One class would be held entitled to one-fifth of the value of the land before ejectment; another class to one-fourth, another to half, another to two-thirds, &c. If the proprietor ever wished to eject he would have to give a notice to quit, the term of which should also be fixed for each class, to be not less than 2 years for any class: at the expiry of the term he would pay the tenant his compensation for ejectment, and take possession.

Shunkur Dass.—The proprietor should certainly be allowed to evict, when *he wants land himself,* the tenant should get nothing for improvement of the soil, he having reaped the benefits himself.

Nund Lall.—Popular opinion is in favor of the proprietor being allowed to evict the tenant if he wants the land for his own cultivation. I think that if the tenant has improved the soil he should get protection from eviction for a period not at the most to exceed ten years; the proprietors say not to exceed 5 years.

16th *Question.*—Say that one *proprietor cultivates the land of another proprietor* of the same village proprietary clan, can he under any circumstances acquire a right of permanent tenancy; what is his status?

Kāim Allee.—If he never paid "malikana," and always bore profit and loss, he should be made proprietor. It is not fit that one proprietor should ever be made "*hereditary*" tenant of another. If he does not deserve proprietorship he should be held to be a tenant-*at-will* only.

Jaishee Ram.—Where one proprietor has long cultivated the fields of another he probably had a claim to be considered "proprietor." If he failed in the claim, or did not pre-

fer it, he should not get the lesser right of hereditary cultivation, he should be held to be a ***tenant-at-will*** only.

Byj Nath.—He should be considered simply a tenant-at-will.

Nund Lall.—He should remain a tenant-at-will, but should be considered to have a preferential right to cultivate with respect to other cultivators of different castes. I have often in cases of the kind heard such a claim to preferential right of cultivation made.

17th *Question.*—Say that the tenant is not of the same clan as the village proprietors, but that he is *of* ***a*** *caste which generally owns* land, and that he has settled in the village and been admitted to cultivation on the grounds of being some proprietor's *daughter's son,* or of some proprietor having invited him to *become his partner* (bhaiwal); has such a tenant any rights which would entitle him to protection?

Kaim Allee.—If a proprietor, or a jagirdar, or a ruler of the time being, invite him to settle and cultivate with a view to the *improvement of village,* and the village has improved in consequence, then without doubt he is entitled to protection.

Jaishee Ram.—As regards this class of cultivators, if the Civil Code would award him proprietorship, he should be made proprietor; but if not, the making him a hereditary cultivator is strongly to be deprecated, as by so doing the law would be infringed.

Byj Nath.—This class of cultivators should be put on a level with the rest, but if a man has given *a written* deed of gift to his daughter, and the daughter's son is found in possession, as is often the case, such possession should be maintained.

Shunkur Dass.—According to the custom in this part of the country, a daughter's son would succeed if no near heirs existed, but not in preference to near heirs. The cultivation would however be probably left with the daughter's son in such a case.

Nund Lall.—By the custom of this part of the purgunnah, a daughter's son, or "bhaiwal" has no claim to inherit, except by virtue of a deed of gift; but if they had been long cultivating in the life time of the proprietor, after his death their ejectment should not be carried out harshly.

APPENDIX No. VI.

LAND-LORD AND TENANT.

REPLIES FROM (1) RAJAH SAHIB DYAL, AFTERWARDS APPOINTED MEMBER OF LEGISLATIVE COUNCIL CALCUTTA: (2) LALLA SOBHA RAM, FORMERLY A LAND-TAX COLLECTOR UNDER THE SIKH GOVERNMENT IN AMRITSUR SUB-DIVISION.

Answers to certain questions anent the Land-lord and Tenant question given by the following native gentlemen, to whom letters were addressed separately by Settlement Commissioner.

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1. Rajah Sahib Dyal, Bahadoor, of Amritsur and Kishenkote (since appointed Member of Legislative Council).

2. Lalla Sobha Ram, of Amritsur, Revenue Official under the Sikh regime, and late Tehseeldar of Amritsur District.

1st Question.—Did hereditary cultivatorship as defined by Revenue Codes under British Government, exist in this country in any former time?	*Rajah Sahib Dyal.*—There were two classes of tenants, one the "*Asamee Kadeemee*" the other the "*Paheekasht,*" but there was no clear distinction of rights between them. *Lalla Sobha Ram.*—Such a thing as an hereditary tenancy in the official acceptation never existed.
2nd Question.—Had the proprietors the *right to oust*, at any time they chose, any or all of the cultivators in the village?	*Rajah Sahib Dyal.*—Proprietors formerly were not fully in possession of the rights of proprietorship, this was the case formerly in Hindoostan also; with the British regime came the definitions of proprietary right; those who were aware of their powers as proprietors and bold enough to use them *used to eject their tenants*, those who were not so confident, or were ignorant, did not. Kardars and Jagheerdars conld transfer property in land from one man to another. *Lalla Sobha Ram.*—The prorietors had the right of ousting tenants.
3rd Question.—Is there any class of tenants in this country which was entitled by custom to a protected occupancy, if so by what name were they known, what were their privileges, and what circumstances would have constituted a claim to such a tenure?	*Rajah Sahib Dyal.*—The name of the class of tenants alluded to is "Asamee Kadeemee." The custom of the country gives them no *claim* to protection from ejection from their tenancy. *Lalla Sobha Ram.*—It was never the custom in this country that a tenant should have a protected right of occupancy.

4th Question.—What *name* was applied *to those tenants* who were *liable to* be ejected after any harvest by the proprietors, and what to those whom it was not customary to eject, and what difference is there between the two classes?

Rajah Sahib Dyal.—Those tenants such as "*Paheekasht*" or "*Judeed Asamee*," who were liable to ejectment, used to be ejected at the beginning of the year in Cheyt. Old tenants (*Asamee Kadeemee*) were *not often ejected*, because the proprietor had not sufficient hold of their lands to exercise such a power. Those who happened to have a strong hold of their lands *did eject* tenants; but ordinarily speaking, the rights of property were fully exercised only by kardars and jagheerdars, not by village proprietors.

Lalla Sobha Ram.—There are 3 classes of tenants, (1) those who have resided in the village for many generations called "*Asamee Kadeemee*;" 2 those who have resided in the village one or two generations, called merely "*Asamee*;" 3 those who live in another village called "*Paheekasht.*" With regard to No. 1 the proprietor treats him considerately and does not summarily eject him, but *changes his land* when he likes; No. 2 the proprietor *ejects* when he likes or changes his holding as he likes; No. 3 *is ejected at once* whenever the proprietor chooses.

5th Question.—Did *long occupancy confer any right of any kind* upon the tenant, or not?

Rajah Sahib Dyal.—Certainly, consideration used to be shown to tenants of long standing, but there was no fixed law in the matter, because village proprietors were not in full possession of their rights, the tenant who was in good favor with the kardar was not dispossessed, and *vice versa*.

Lalla Sobha Ram.—Occupancy conferred no right whatever.

6th Question.—Has a *tenant resident* in the village who has received his tenancy in the *way of inheritance*, that is from his father or grand-father, *any right or not*?

Rajah Sahib Dyal.—Such a tenant had no other rights than those I have above given as belonging to the *Asamee Kadeemee.*

Lalla Sohba Ram.—My answer to No. 4 will answer this.

7th Question.—If there was *any difference between tenants of long* and

Rajah Sahib Dyal.—The Asamee Kadeemee was certainly in the habit

tenants of *short* occupancy, what was it, that is to say in what respects could the former act independently, and what things were they unable to do without permission of their land-lords?

of cutting timber without especial leave, whether for farm or house-hold purposes. The other classes of tenants had no such privilege.

Lalla Sobha Ram.—Tenants of long or short occupancy could not break up new land except with the permission of the proprietor.

8th Question.—Can the tenant improve his holding, *i. e.*, can he sink a well or plant trees?

Rajah Sahib Dyal.—It sometimes happened that a tenant sunk a well when his land-lord was in a very poor and reduced condition, but generally *no right of sinking wells* pertained to tenants. Improvements, such as grubbing and cleanig were generally made subject to an especial agreement between the parties for a light rent in recompence.

Lalla Sobha Ram.—He could plant trees, but not sink wells; could also cut timber for his own purposes, but not for sale.

9th Question.—Supposing that formerly the tenant had no *power of sinking wells*, but now that it should appear advisable to give him the power, what conditions should be annexed?

Rajah Sahib Dyal.—I am of opinion that the right of sinking wells should *not be given* to tenants, the proprietors will object strongly to wells being sunk without their permission.

Lalla Sobha Ram.—If a sufficient reason why tenants should be debarred from sinking wells is wanted, I will give this one—viz., that they never sank wells before.

10th Question.—Was there ever in former times a class of tenants *who paid in cash*, and were entitled to claim to pay in that way, if so when, and under what regime?

Rajah Sahib Dyal.—There was no class of tenants paying in cash. When there existed a contract to pay the revenue *in cash*, it was *with the proprietor*. The tenant had no recognizable shares, so could not pay in cash. The proprietors formerly paid in grain, not in cash, and the tenants preferred that way of paying their rents also.

Lalla Sobha Ram.—Formerly kunkoot was the practice all over the country; in Sumbut 1878 in many purgunnahs cash began to be taken.

The Lumberdars were then called "Chowdries;" the contracts were in their names, and they collected cash as they chose from proprietors and tenants alike.

11*th Question.*—What has been the custom hitherto as regards *eviction of tenants,* that is *when* can they be evicted; *for the future what custom* should be kept to in the matter?

Rajah Sahib Dyal.—Tenants used to be ejected in Cheyt. Should continue to be ejected in that month.

Lalla Sobha Ram.—Tenants were evicted in Phagun and Cheyt.

12*th Question.*—Did the *custom of taking rent* ("malikana") exist in this country, if so, what was the mode of taking it? and if there were more modes than one describe them all?

Rajah Sahib Dyal.—The custom certainly existed, but not in all places; where a man got a firm footing he demanded it, otherwise it was a mere matter of talk not a reality. It was taken at the rate of 5 per cent. In Jagheer villages a fee of 5 maunds on the 100 on the total out-turn used to go to the proprietors, who divided it amongst themselves, this was in the way of "*punchotra.*"

Lalla Sobha Ram.—In the days of kunkoot the proprietors used to take from the tenant 5 seers on the maund, and 2 annas in the rupee on the "zubtee," calculated on the Government share.

13*th Question.*—At what percentage should rent ("malikana") be calculated on the present Government revenue, so as to ensure the land-lord his proper share of the profits and yet not distress the tenant?

Rajah Sahib Dyal.—It should *never exceed* 50 per cent.

Lalla Sobha Ram.—"*Malikana*" over and above *mulba* and all other extra cesses, should run from $12\frac{1}{2}$ to 18 per cent.

14*th Question.*—Was it ever the custom *that written agreements* were made between land-lord and tenants, and if not how could the custom be now introduced?

Rajah Sahib Dyal.—The custom of puttas between proprietors and tenants never prevailed before, except in some instances when it was given by a jagheerdar. It should now be introduced.

Lalla Sobha Ram.—The custom of puttas has never prevailed as yet. It ought to be now introduced.

15*th Question.*—Supposing the case of a *land-lord who has very little*

Rajah Sahib Dyal.—When the proprietor was in full possession of

land, and wants to take into his own cultivation the land of a tenant who has cultivated for 3 or 4 generations, (i. e., whose tenancy has descended to him from ancestors in the 3rd or 4th generation) and who has been declared "hereditary" cultivator, can he evict such a tenant; and if the tenant has *improved* the quality of the land, ought he not to first get compensation, or ought he to get some protection from eviction; or is there any other due which should be awarded to him?

his rights he *would have ejected such a tenant*, when he was unaware of his proprietorship he would not have tried to eject. No compensation was ever given for any improvements of quality of soil.

Lalla Sobha Ram.—If the proprietor wants the land for *his own cultivation he can oust* the tenant, whose plea that he has improved the quality of the soil should not be listened to, for he has had the benefit of its improved produce; the proprietor should however give a year's notice to the tenant.

16*th Question.*—Say that one *proprietor cultivates the land of another proprietor* of the same village proprietary clan, can he under any circumstances acquire a right of permanent tenancy, what is his status?

Rajah Sahib Dyal.—He is on the footing of a cultivator.

Lalla Sobha Ram.—A tenant of the same caste as the proprietary body who may have been invited by them many years ago to settle in the village, ought to be considered proprietor of his holding.

17*th Question.*—Say that the tenant is not of the same clan as the village proprietors, but that he is of *a caste which generally owns* land, and that he has settled in the village and been admitted to cultivation on the grounds of being some proprietor's *daughter's son*, or of some proprietor having invited him to *become his partner* (Bhaiwal), has such a tenant any rights which would entitle him to protection?

Rajah Sahib Dyal.—Such men have *no* rights, deserve no protection, and can be ejected. In pergunnah Baigu however they certainly are treated as if they had rights.

Lalla Sobha Ram.—If the son-in-law is of a different clan or caste he would not be a proprietor, but only a tenant.

APPENDIX No. VII.

LAND-LORD AND TENANT.

EXTRACTS FROM SETTLEMENT REPORTS

OF 14 DISTRICTS.

Extracts taken from Punjab Settlement Reports, shewing what was ascertained to be the status of tenants recorded as "hereditary cultivators," during times anterior to British rule.

These will be arranged in the order in which each district came consecutively or contemporaneously under settlement.

It will be observed that from Amballa and Loodiana, where the great State enterprise called "the Land Revenue Settlement" was first launched, up to the Chenab river, there was one wave of opinion, striving against the current of popular usage. In nearly every district* the principle adopted in defining the position of privileged tenants was in the *interest of revenue*, and a class of tenants having "right of permanent occupancy" was created on the basis of a prescriptive occupancy of 12 years.

*Amballa. Loodiana. Jullundur. Hoshyarpoor. Kangra. Feerozepoor. Goordaspoor. Amritsur. Lahore. Sealkote. Goojranwalla. Googaira.

As soon as the enterprise was taken across the Chenab, a master mind was called upon to define this principle: a different ruling was laid down by Mr. Edward Thornton, the Commissioner† and cordially supported by Mr. D. F. McLeod, Financial Commissioner ‡ enjoining that the relation of land-lord and tenant must be amicably settled on *between the parties*, on the *basis* of *existing rights as attaching to property*, quite apart from all revenue considerations. A period of occupancy was *not* to be the sole test; the circumstances of each tenure were to be looked into. Thus the 12 years rule was repudiated by the Chief Commissioner himself (the present Viceroy), and custom was admitted, to be the basis of adjustment; and so in the districts north of the Chenab, another principle has been taken up and followed.

† No. 283, dated 14th Sept. 1855, from Mr. Thornton, to Mr. Ouseley, Settlement Officer of Shahpoor.

‡ From Financial Commissioner to Chief Commissioner.

No. 1010, dated 11th December 1855, from Mr. Temple, Secretray to Chief Commissioner, to D. F. McLeod, Esqr., Financial Commissioner.

Settlement Report, Amballa District, Mr. Wynyard.

Para. 309. * * * * * * *
I have never failed to keep this distinction clearly before me, and to urge on the officers working with me the great difference which exists between a right to possession of land at a fixed rate, and a right to hold lands paying only the share of jumma due for these lands. *The admission of tenants to the proprietary right is a certain way to weaken the responsibility of the brotherhood.*

Para. 310. * * * * * * *
I have thought it quite sufficient, if he is not one of the Bhyachara, to record him as a tenant, and to fix, if he requires it for his protection a money rental at 30 per cent in excess of the revenue rates.

Para. 311. The difference between tenants-at-will and those with right of possession has also been enquired into * * * * * *
As a general rule, *uninterrupted possession for and above 12 years*, in succession from father to son, *established within that time*, was held to be *primâ facie* sufficient proof that a tenant should be entered as having a right of possession.

Where the assessment of this district in Talloqua Kotaha was reconsidered by Mr. Melvill, that officer in his report makes these remarks :—

Para. 192. *Asamees* pay at *equal rates with the proprietors.* The Asamee moreover, in the apportionment of land, stands on exactly the same terms as the proprietors * * * * * * * * *

He will *give no additional tax to the proprietors.*

In Pergunnah Nuraingurh, however, we find that money rates were not allowed to hereditary cultivators.

Para. 285. When the record of liabilities was made under Mr. Wynyard's orders, non-proprietary occupants were very generally assessed with rentals in kind. Although it is a good principle to allow hereditary cultivators to demand a money rental during any period of the currency of a settlement, notwithstanding they may have voluntarily elected to pay in kind when the khewut was being made, I was of opinion that in these illaquas *such tenures should not be given.*

[In another place it appears Mr. Melvill is in favor of proprietors being allowed to exercise the right of eviction; as no limit could be fixed, regard being had to tenure, (in other words " custom") " up to which the possession of land should constitute a right to hereditary and perpetual occupancy."]

Para. 363. Hence has arisen the distinction between proprietors and tenants, and the division of these latter into hereditary and non-hereditary. The primary distinction is one, that was, from the very introduction of our rule, understood by the people, but *they did not appreciate the difference* between the two kinds of tenants " the mouroosee" and " ghair mouroosee." *These terms were introduced here or elsewhere in the Punjab by the Settlement " Establishment.*" Nevertheless the distinction is an important one. There are tenants whom the proprietors, especially if they happen to be of an old stock, of the higher castes, who *would consider it a hardship not to be allowed to oust from their holding at pleasure.* There are other tenants, who from long possession, all parties agree should retain their lands undisturbed. It would *be unjust to deprive such a person of the power to recall those lands*, when his circumstances improve, or in fact when he pleased to do so. *It is difficult to fix any limit, up to which the possession of land should constitute a right to hereditary and perpetual occupancy ;* such cases must be determined *on their merits with reference to the circumstances attending the tenure.*

Settlement Report, Loodiana District, Mr. Davidson.

Here too the same equality, even of " tenants-at-will," is elicited.

Para : 17. * * * * * *

The Sikh ruler took the same payment and the same proportion of grain from the hereditary proprietor or from the hereditary cultivator *or the mere tenant-at-will ;* and this not because his demands were so light, but from the fact that the share of the whole produce exacted was so full, that it admitted of no distribution according to the measure of their rights. * * * * * *

Para : 93. * * * * *

The result of Sikh management was that proprietor and non-proprietor, all were assessed alike, with the sole exception of the Inamdars. But the people have begun to perceive, that whereas there was no clear profit admitted to be the distinctive right of the proprietor on the soil, now the Government demand has been so situated as to leave such profit clearly defined. Whose right is it to enjoy this difference? clearly it is the right of the proprietors and not the non-proprietary cultivators.

In some cases, where the people have understood this, and where perhaps every assessment was undoubtedly moderate, the proprietors have insisted upon the full rents being

* Note.—Mark the word "Establishment" E. A. P.

recorded against their tenants, but in a large proportion of cases, the tenants still remain *rated at the same rates with the proprietors.* It will be seen that in the arrangement of this matter, the decision was for a state of things which was to ensue; the people had not yet experienced the circumstances calling for the new arrangement; and hence in the majority of cases, when the people were called upon to record the rates between themselves, as proprietors and their tenants, *I very much question whether they understood what they had to decide:* whether they *had formed any correct idea of the distinction of rights, which could call for a distinction of rates.* * * * * * * *

It remains for superior authority to decide, how far such claims as they arise, may be admitted to a hearing during the term of Settlement; as it is apparent, that the grounds on which such claim may subsequently arise, *have not been fully adjusted, simply because the people have not clearly understood their own position.*

Settlement Report, Jullunder District, Mr. R. Temple.

Para. 207. The right of occupancy apart from proprietory rights *was unknown.* * * The Government may have partially recognized it, but the people did not; however long a patch of land may have been occupied *the proprietor would at his pleasure, resume it without ceremony, and the cultivator would resign it without demur.*

Para. 238. It so happened that the rule immediately preceding ours, pressed severely on the landlords, who in part evaded their burdens by saddling them on the cultivators; consequently old landlords lost ground in the same proportion as the cultivators gained it. *Still the old proprietors were looked upon as the lords of land.*

Para. 298. It was not attempted to fix any terms of occupancy which should *per se* entitle a cultivator to rank as hereditary, but it will be found, that cultivators who have been in possession of the same field for 13 years and upwards, have at *the present settlement generally been vested with hereditary rights.*

Para. 300. In some villages, where the tenants are the main stay of the estate, it has suited the proprietor to excuse the hereditary cultivators altogether from the payment of rent. In such a case, the cultivator would discharge the revenue and regular additional items which might accrue on his holding, and would have to pay 5 per cent. lumberdaree allowance to the land-lord. He would thus become in some respects a *subordinate proprietor*, except that he could not sell or transfer his rights. *But the land-lord's responsibility would remain.*

302. * * * * * *

This distinction between hereditary and non-hereditary cultivator is *not indigenous in this part of the country. It has been introduced by the settlement.**

Settlement Report, Hoshyarpoor District, Mr. P. S. Melvill.

Para. 190. With regard to the decision of disputes about the right to cultivate, a few words will suffice. *No period can be fixed,* I believe, as entitling a tenant to a permanent interest in the cultivation; this question can only *be decided on viewing the circumstances of each case.*

191. Tenants who have not hitherto paid any proprietary dues, have been exempted from such in future. It is necessary to be cautious in this matter, for the people who prepare the record of rights, are too apt to stimulate the proprietor to demand the maximum rate of proprietary allowance at 18 per cent on the revenue.

Settlement Report, Kangra District, Mr. G. Barnes.

Para. 123. The hereditary right to possession and culture of the land is called in the language of these hills "Warisee." * * * * *

Para. 124. I believe the term properly applied belongs *only to the descendants of the original settlers,* who by their industry and enterprise first reclaimed the waste. I have known cases where the present incumbent has had uninterrupted possession for thirty or forty years,

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* This is confirmed by Major Elphinstone, Deputy Commissioner (see his reply Appendix 11): yet Colonel Lake, the Commissioner, would make out otherwise. **E. A. P.**

but he will *not assume, nor* will the people *concede to him*, the *appellation of "Waris."* If asked whose land it is they will still refer to those traditional persons in whom the right was once known to reside. * * * * * *

Directly these conditions were neglected, the Government had an undoubted right to *transfer the tenure* to another, and to provide for *the security of its own revenue.** At first the alienation was *only temporary*, and *the right to return within a certain period was universally recognized.*

Para. 128. * * * * * *

A "Waris" was never dispossessed by an arbitrary order, or if he ever was, the exception was so rare as to prove the general rule.

Settlement Report, Ferozepore District, Mr. E. Brandreth.

Para. 202. *All* the cultivators, I believe without any exception, *paid their rent in kind* previous to the present settlement, even "zubtee" rates * * were very uncommon, the rents of these crops were also paid * * *with the sanction of the proprietor.*

Para. 203. In the revised settlement all the cultivators with right of occupancy who chose, have been permitted to commute their former rent in kind for a money payment. The maximum has been fixed at 30 per cent on the jumma (Commissioner's letter No. 1161, dated 14th June 1854); in special cases however (as when the cultivator has sunk a well at his own expense or broken up waste land at some cost to himself) a lower rate has been fixed; the same considerations have been held to confer on him rights of occupancy; ordinarily if he has cultivated the land for *a less period than* 12 *years* * * he has been entered * * as a mere tenant-at-will, but where there are any such special grounds as those referred to above, *he has been recorded under the name, and invested with all the privileges, of a mouroosee or hereditary cultivator.*

Para. 209. *There are also a great many other customs* of greater or less importance connected *with this system of payment in kind*, which vary very much in different villages. * *

Para. 225. In these tenures there is considerable difficulty in distinguishing between the proprietary and non-proprietary cultivators, and in defining the exact position and institution of the latter. *There are cultivators subordinate to particular proprietors* who usually pay their rent in kind, and their position is easily defined: but as a general rule, the cultivators of land, common either to the whole village or to one of its sub-divisions, pay their rent at the same rates as the proprietors themselves; and their position is distinguished with much more difficulty.

226. * * * * * *

The custom of both parties as well as the *precedents of the past were consulted*, and the position of the non-proprietary cultivators was carefully defined in accordance therewith.

* * * * * * *

I should also state that in most cases and except for any special reason to the contrary, where the cultivators pay at the same rates as the proprietors, they *have been recorded as possessing rights of occupancy though they may not have been* 12 *years in possession.*†

Settlement Report, Goordaspoor District, Mr. R. H. Davies.

Para. 25. A right of heritable occupancy *has been conceded to a large* proportion of the cultivators of the tehseel. The title is commonly founded on a *prescription from* 12 *to* 20 *years.*

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* Observe this: there is an admission by one of our best Revenue Officers of direct interference with existing usages, and why—to prop up the revenue. E. A. P.

† Here, we see even the legal period of 12 years is set aside for a shorter one. Could any thing be more arbitrary? E. A. P.

Again, Mr. Cust's Report on Shukurgurh, a pergunnah of this district :—

Para. 36. The status of the hereditary cultivators, or tenants with right of occupancy, *was created in this pergunnah as elsewhere by the Settlement officer*; it was defined to be cultivation of one plot for 12 years uninterruptedly, accompanied by residence within the village or an uninterrupted cultivation of 20 years without residence.

* * * * * * *

In only very exceptional cases has the proprietor *lost his right* of malikana (rent) : the amount fixed, at settlement varies from 15 to 24 per cent, and this includes cesses which themselves reach 14 per cent.

When this last report was reviewed by His Honor the Lieutenant Governor, in 1859, the Secretary records these remarks.

Para. 7. Mr. Cust, in his remarks concerning hereditary cultivators, appears to be under the impression that no such class existed in the Punjab prior to our rule. It is quite certain however that though the *designation of "mouroosee" is novel*, cultivators having an acknowledged right of occupancy, *subject to the payment of the customary* proprietary fee, and the Government demand, *were* scattered in most villages held by Jats; or even by Rajpoots, throughout the territory which the Sikhs originally acquired. * * * *

Nevertheless *it may perhaps have happened that the title of hereditary cultivator has been too easily granted*, or that the rights attending it may have been unduly magnified.

Settlement Report: Amritsur District, Mr. R. H. Davies.

It is asserted there was no difference whatever in the payment exacted from proprietors, hereditary cultivators, *and tenants-at-will.*

Para. 95. The hereditary cultivators, like the proprietors, pay according to *the village rate*, both as regards land and water. No malikana was claimed *from them by the proprietors*, and none has therefore been recorded in the khewuts. The extent of land occupied by this class of cultivators does not exceed 10 per cent of the cultivated area.

Para. 96. The tenants-at-will in most cases have engaged to pay according *to the village rates*; but their engagements are subjected to renewal every year.

Settlement Report : Lahore District, Mr. R. E. Egerton.

Para. 15.—The rights of the hereditary cultivators *have been entirely created under our rule.* Under the Sikhs the proprietor had *always the right of ousting a tenant whenever he chose;* but this was never done unless the cultivator had made himself obnoxious.

50. * * * * 50 per cent (alluding to the cultivators) have the right of occupancy according to the *rule established at settlement*, which gave the right of hereditary occupancy to cultivators who reside in the village after 12 years, and to non residents after 20 years uninterrupted incumbency.

This report is reviewed by Mr. Temple as Commissioner, who remarks as follows :—

Para. 18. I observe that at the close of para. 50 Mr. Egerton mentions that 12 years possession with a resident, 20 years with a non-resident, cultivator has been held to give a title of hereditary occupation. *It is now however admitted that it is the quality, as well as the length of occupancy, that should determine the point.*

Settlement Report, Sealkote District, Mr. Edward A. Prinsep.

Para. 74.—Two classes of tenants were discovered having the most prominent existence. (1) The one for a long time resident in villages, whose tenancy was not often disturbed, and who

enjoyed privileges locally admitted ; (2) the other who cultivated off and on, who chiefly resided in other villages, whose lands were constantly being changed at the will either of the Kardar, his agent, the village officials, or individual proprietor. Tenants were known under such names as

I. *Hissa chook*, who *shared* the payment of *revenue* being resident cultivator.

II. *Vuryam*, who had cultivated for *several years* or regularly from year to year.

III. *Asamee*, who had been *subordinate* cultivator of a particular land-lord for some years.

IV. *Vasee*, a *resident* cultivator.

V. *Pahee, or Paheekasht*, a mere tenant-at-will.

VI. *Kama*, a farm labourer who conducted *tillage* for his master.

There is a class of tenants in Bujwunt termed "Oopra," same as the *Ooprahoos* of the Andur tract in Shukurgurh, who till one crop and then disappear. They are distinguished from "Paheekasht" as coming from a distance, and "Vande Asamee" or tenants who lived in neighbouring villages.

Para. 375. The first two, and perhaps the fourth, in some places, were allowed privileges. They shared in the payment of revenue, their tenure was heritable; so long as they paid the demands of the State, and the village charges, they were not molested. They might cut trees planted by others, for agricultural or domestic purposes; but could not plant or sell them without asking the owner. They could not in any way transfer their right of occupancy, and instances of sub-letting have never come to notice. With the first class, however, the right merged more into that of a subordinate proprietor. He became a co-partner for the time, not only bearing the liabilities, but enjoying all the profits as a proprietor. It has nowhere been traced, that parties in the position of the 1st class have ever paid proprietary dues to anybody, while from the others rent charges under the name of "biswee," "malikee," "ismee," were universally taken under the grain system, and made over to the proprietors, at the time the Government account was struck. But proprietors *openly declare that every tenant could be evicted at will when the land was required by the land owner for his own use.*

Para. 376. The third and fifth classes were essentially tenants-at-will. The latter could be ejected at any time; the only difference between the two consisted in the latter being completely at the mercy of the land-lord; while to evict the former it was perhaps necessary to apply first to the kardar. * * * * * * *

Para. 378. Enough has been shewn to establish the existence of a class of cultivators having some superior rights *in the view laid down in Settlement Directions. On these have been conferred a right of hereditary occupancy as in other districts that have been settled.*

The usual tests required when cases were referred to, or came before me, in appeal, were :—

(1.) 12 *years possession on part of resident and* 20 *years from non-resident claimants.*

(2.) Proof of descent from father to son.

(3.) Unopposed appropriation or reclamation of the land.

(4.) Intermediate improvement.

(5.) Payment of revenue in cash.

(6.) Whether losses had been sustained.

(7.) Power of cutting trees.

372. *The terms "Mouroosee" and "Gair Mouroosee" have been introduced with a view to uniformity with other districts: but* I regret the distinctions locally known were not kept up. * * * * * * * *

Settlement Report, Goorjranwalla District, Mr. J. H. Morris.

Para: 33. There have been very few, if any, disputes regarding cultivators with rights of possession. The fact is that in consequence of the thinness of the population and the scarcity of cultivators, "the proprietors have been only too glad to *give up to all* their cultivators *the right of*

possession, with the object of inducing them to remain on the estate. We find that not only have the majority of cultivators *been entered as hereditary but that many also hold their lands at the same rates as proprietors*: (that is, without any rent being fixed). "Malikana" is the exception not the rule, and it rarely, if ever, exceeds 6¼ per-cent or 1 anna in the rupee.

Settlement Report: Gogaira District: Captain Elphinstone.

Para: 49. The distinction between hereditary and non-hereditary cultivators is a *creation of our Government. Under the native rule in this part of the Punjab it was altogether unknown. Proprietors had the right to eject any tenants* whom they disapproved of, *however long the latter may have resided on the estate,* * * * * * * *

* * * * * * * * *

It was therefore of some importance when determining the position cultivators were to occupy, to ascertain to whom the claim of "*Bootee mar*" or first ploughing of the land belonged. In accordance with instructions issued on this subject by superior authority, all cultivators who could make out their claim to the "*Bootee mar*" were recognized as hereditary cultivators; *a privilege also conferred on those who had cultivated for* 8 *years, if residents in the village, and* 12 *years if non-residents.**

We now come across the Chenab. In Goojrat there was a new solution of the question in the *creation* of a class of ("*Malik kubza*" or) sub-proprietor intermediate between the position of the real landowner and ordinary cultivator. In Shahpoor arose the question—" Define your terms, who is an hereditary cultivator"? and from that date a new view, and different principles, were pursued, which received the concurrence of the Local Government, and really amounted to a repudiation of much that had been done in 12 preceding districts.

Settlement Report: Goojrat District: Captain H. Mackenzie.

Para: 194. In pronouncing tenants hereditary we have been *guided by no fixed rule as to period of possession.* In villages of comparatively recent establishment 12 years would be deemed a sufficient period, while in long established villages 20 years would be required to constitute a tenant hereditary.

Settlemeht Report: Rawul Pindee District: Captain Cracroft.

Para: 298. It was patent that during British rule, *no rent* † *had been exacted* from the claimant or defendant, as the case might be, and during Sikh rule the lease had ordinarily been borne by all clsses alike; or if rent was taken by Government by appraisement of the standing crop, *still, all were on the same terms.* ‡

Para: 303. The cultivator tried to prove antiquity of tenure; the proprietor endeavoured to shew that he or his father had located him, and had allowed him to remain on his lands, but that he was not therefore obliged so to continue him. The cultivator often pleaded that the pro-

* Here too a shorter period than 8 years seems to have been adopted under sanction of authority. E. A. P.

† No rent was taken simply because Government absorbed it in the high revenue! E. A. P.

‡ *On the same* terms only as affecting the *revenue* aspect of the question, not as affecting rights and usages attaching to property. E. A. P.

prietor had been in great straits, and had been rescued by the cultivating class, and that it was hard he should be at the mercy of the proprietor in these good times, when in bad ones he would have made any sacrifice to retain him. *

Again. The rule of limitation was ultimately applied with the greatest reserve in favor of the proprietor, and it was generally found *that it satisfied him.* †

Again. *It was ruled,* after consultation with the heads of sub-divisions, that a cultivator who had brought waste land under cultivation and had paid cash rates *for* 12 *years*; or who had received cultivated land, paid cash rates, and had possession *for* 20 *years*; or who had received cultivated land, paid in grain and held *for* 30 *years* prior to settlement; ‡ should be recorded an hereditary cultivator. But at last the practice resolved itself into this, that 12 years clear occupancy prior to British rule, *i. e.*, A. D. 1848-49, should under any circumstances constitute a title to an hereditary cultivating tenure.

It was asked by the proprietor himself, as suggested by Mr. Thornton, whether he considered he would, *could,* or would not, or *could not,* oust a cultivator; ‖ in a great many cases he declared *he would not*; such a case was entered on what is called in the " madakhilut " paper, or statement of the rights and liabilities of the cultivator.

Again. The proponderance of the Sikh powers had rendered the position of the cultivators more secure, and such a burden had been imposed that, though theoretically the proprietor *had the power af ousting the cultivator, practically he had never the will*; ¶ while in the western part, the revenue was lighter, the proprietor more powerful, and the Government weaker. As a matter of expediency, it would *I think be very unwise to remove the protection of the State from the cultivator* recorded as hereditary in the settlement. The proprietor would at the present time, feeling all restriction removed, *at once oust* the old cultivator § to the undoubted detriment of the land revenue and his own injury, and it is very questionable whether he would ultimately be able to retrieve his loss.

Again. At the same time it is a hardship that when with the increase of his family the proprietor wants land, so as to reap by personal labor the fruits of cultivation as well as the rent, the law leaves him no loop-hole, or means to effect this. Surely the right of the proprietor is prior to that of the cultivator of whatever status, and therefore, after deliberation with the heads of proprietary bodies, *a clause has been inserted into the administration*

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* Is this plea admissible ? a person had a great many houses on hand during the mutiny which he could not let. He yielded to the times when property was depreciated and was glad to get occupants on small rents. When better days come is he to be deprived of his customary or legal power of ouster on such a plea ? The argument cuts both ways. E. A. P.

† Surely it could not satisfy if it resulted in locking up his land and depriving *him of any existing right of eviction.* E. A. P.

‡ So here we have 3 periods laid down, which have been enjoined in no other districts; a new rule altogether, not enjoined apparently by any authority or order of Government or by any particular law existing; while the period was counted from commencement of British rule, and every where else it was counted from date of claim, enquiry or entry. E. A. P.

‖ This was the issue : could he exercise the power to evict ? It is said here, " he would not ;" but what was his reply when he was asked if he could. Did he deny this ? It is not stated. E. A. P.

¶ Here the power of eviction is admitted ; but it is said he never had the will. Facts I believe are against this : were field never changed about ? were they never given up, when required for *personal,* cultivation, and if so, then does not this shew a mutual relation accounting sufficiently fol why he was evicted, and why he was not ?

§ I do not believe that they would do this as a rule, for the mutual interest is as much (nay more under a cash revenue system) at stake now, and will be in future, as it has ever been in the past.

paper, declaratory *of the right of the proprietor by regular suit in the Revenue Court, to redeem land* from the hereditary cultivator, making for the latter the best arrangement he can. * The Court has still a *veto* in favor of the cultivator, and can award compensation either from the common lands or in cash.

* * * * * * *

The clause is in consonance with local usage. † The Sikhs would often support a proprietor in a case of the kind, and did not ordinarily interfere, excepting in cases where their revenue was jeopardized ; *generally the proprietor had plenary power over his cultivator*, a power *which he often did not exert*, because of the crushing weight laid on him. This is a consideration which must operate favorably for the cultivator, but not to the extent of placing him in a position more favored than that of a proprietor.

Again. Para. 305. Given the maximum rent the land can produce, leaving the cultivator sufficient livelihood, the *proprietor had never wished to oust* him, except in the cases mentioned in the preceding section. ‡

Again. It may be argued that during Sikh rule *the Government really took by far the largest portion of the rent*, and that of the remainder left, if any, it is very problematical whether *it did not in fact remain with the cultivator rather than with the proprietor* : this view seems to be corroborated by the fact of the proprietor having taken such very small fees from cultivators, *such as a seer or two per maund, &c.* ||

Again. And it will henceforth rest with future administrations to see, that with the increase of material prosperity, the former is placed in full possession of his full rights in the matter of rent when levied in cash. ¶

Again. I conceive it to be a great improvement, that of late years it appears to be acknowledged on all sides that rent *in kind* is not so bad a thing after all. * * *

The proprietors *cling to grain payments* § with a tenacity impossible to overcome. It is therefore no small advance in our political economy, that we have at last adopted a *policy of non-intervention in the matter.* * * * * * * * * * *

As a general rule I think it will be found that *the less interference we practise in the internal relations* of the people among themselves the better. §

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* This remedy is an important step in the right direction. It gives a heritable occupancy, that is a preferential right of occupancy and allows eviction, so that the old status is so far admitted and kept up. E. A. P.

† Mark this. The local usage being the right to evict, and out of a regard for this the special remedy is provided by a new clause which will run counter to the revenue doctrine—that *so long as rent is paid*, a tenant has right of occupancy. He did not exert his power simply because he did not care to do so, or because an oppressive Government had come and intercepted the rent, thereby putting a load he could not bear, and reducing the value of his land. Is this a reason to be brought *against the land-lord* when property recovered its value, to deprive him of right of eviction ? E. A. P.

‡ He may not wish to do so, but why restrict the power to do so if he has exercised the right, and custom allows him to do so ? E. A. P.

|| True Government did absorb the rent, but the land-lord and tenant only stood equal in regard to payment of *revenue.* It is admitted there was a little profit ; and *it* went to the former even in times when revenue was oppressive under an unjust rule. It is not equity then under a liberal Government which takes a light revenue to see that the " surplus" (called rent in all other countries) should go to the same parties who took these so called " fees ?" It is evident the tenants did not, as a rule, get these fees. It is evident too they were *small*, simply because the unjust rule of might came and took the excess itself, even that Government did not crush out such right or we should never have heard of such " fees" being taken at all, and why not let him have his full right, e. g., the *power to evict* as heretofore. When payments are in grain, the liabilities and all the profits (under grain rent the greater profits go to the land-lord) are with the proprietor, while the tenant is a pauper, who cannot improve and who lives on his bounty. E. A. P.

¶ If grain payments are so extensively to be upheld and this policy is a good one, then the greater rent goes to land owners, little is left to tenant beyond food and clothing. Why record such as having rights of permanent occupancy when all the liabilities are on the shoulders of the former and tenants cannot improve. E. A. P.

§ Custom should stand : there should be no interference ! good. Then why create new rights of occupancy against custom, in favor of grain paying pauper tenants, to the prejudice of those who now have to bear the burden of taxation, and to the detriment of a country's growth. Is this interference or not ? E. A. P.

Para. 316. In some parts of the district where the proprietors have retained most power, the cultivators generally pay extra dues, such as "Bahoee Mohassalee;" carriage of grain from the stock to the proprietor's house; a rate on ploughs or fields, varying from 8 annas to ½ per annum; bhoosa or fodder, sometimes a load per field called "Bunna Char;" sometimes a share equal in weight to the grain payment.* In all these cases, if it was proved that the due was taken, it was upheld for the future.

Para. 332½.—When the Sikhs took the management of the revenue of this part of the country they collected it by appraisement of the standing crop, and took all they could; but inasmuch as the Jodrehs, the Ghebas and the Khas family (proprietary classes) did not cultivate themselves, and were therefore under Sikh management left entirely destitute, a "chaharoom" or *fourth part of the proceeds was given to them by the Sikhs.*†

The peculiarity of this chaharoom was that it was not collected with the *revenue, but remained in the pockets of proprietors in the ratio of their shares.*‡

Para. 365.—The hereditary cultivator is *not* acknowledged by the proprietary body *to have existed before British Rule* ‖ but it is very difficult to know where to draw the distinction. Although the Sikhs had no "Directions to Settlement and Revenue Officers" and no code of laws, their instincts led them in the direction of their immediate interests as to the matter of land revenue; and *practically their rule was favorable to the permanence of the cultivators' occupancy.* §

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*These dues existed everywhere before. They have been upheld here in some cases. But is such a tenant now to be recorded as having right of permanent occupancy, when he never had the right before, and he gave suit and services as here shown, paying dues? Under cash payments and protection, have all these incidents been snatched away from those who are held to possess them as rights attaching to landed property? **E. A. P.**

† That is they were recognized as the land-owners. The Sikhs took their revenue but gave ¼ on "rent" lavishly and with open-hand. What better proof can we have of the State admitting ownership and considering the position and rights of property as belonging to a dominant class, in spite of the revenue which being taken in grain from all classes, brought all classes to a level in respect to the State, but not Quoad each other as so many wish to make out, and which is held up as the chief argument for creating a new class of protected tenants. **E. A. P.**

‡ The Sikhs did not *destroy or deny rights in property*; they only left the land *less valuable* as a property under their short-sightedness. **E. A. P.**

‖ One more evidence shewing deviation from local usage. **E. A. P.**

§ But favorable only so far as it affected "*revenue*," not in any way as affecting well known relations mutually understood and existing between land-lord and tenant. In other words property in land still continued with all its rights and usages, why should these be excluded from enquiry under British rule in regard to the status of the latter? **E. A. P.**

APPENDIX No. VIII.

LAND-LORD AND TENANT.

OPINIONS OF MESSRS. E. THORNTON, D. F. McLEOD; AND ORDERS OF SIR JOHN LAWRENCE, CHIEF COMMISSIONER, IN 1855.

Correspondence in the year 1855.

(1.) Showing the new principle initiated by Mr. E. Thornton, Commissioner of Rawul Pindee, for determining the position of Land-lord and Tenant.

(2.) Views of Mr. D. F. McLeod, Financial Commissioner.

(3.) And orders of Sir John Lawrence, Chief Commissioner.

No. 539—4709.

To

R. TEMPLE, ESQUIRE,

Secretary to the Chief Commissioner for the Punjab,

Lahore,

Dated 1*st December* 1855.

SIR,

REVENUE.

(1.) From Settlement Officer of Shahpoor to Commissioner and Superintendent of Jhelum, No. 79, dated 13th August 1855.
(2.) Commissioner's reply No. 283, dated 14th September 1855.

I have the honor to annex copies of the correspondence noted in the margin on the subject of defining the position of cultivators having a permanent right of cultivation, and determining what cultivators have this right, this correspondence having been called for by me on an inspection of the Jhelum Index of Correspondence.

2. The questions put by Mr. Ouseley indicate the absence, at present, of any very definite rules for the guidance of young Settlement officers, on this very important point; and seem to *show that erroneous ideas are abroad* as to the course which has been pursued, and the *orders which have been* issued heretofore in regard to it. *The views enunciated* by Mr. Thornton in reply to him, *have my entire concurrence,* and appear to *me to be exceedingly well calculated to be generally useful.*

3. I am desirous, therefore, of circulating a copy of his letter generally for the guidance of all who may hereafter be engaged in duty of preparing or revising the record of rights. But as the questions involved in it, are of a fundamental character, and *the adoption of Mr. Thornton's views will entirely supersede the use of the time-honored designation of " Mouroosee" and " Ghair Mouroosee,"* which have heretofore been employed in the Punjab, as elsewhere (though in my opinion, here inappropriate) I think it right to submit the matter before adopting this course.

4. I agree with Mr. Thornton in thinking that *no general* rule applicable to all circumstances, *can be laid down* without danger of injurious results, for determining either what cultivators are to be considered as having the right of cultivation; or what rent or share of the produce they shall be required to pay: and I believe that evil has resulted from attempting to act in this matter too much upon exact rules, *without paying sufficient attention to*

difference of circumstances or of usage. But the Chief Commissioner may perhaps desire that any general instructions which may be issued, be accompanied with *some general caution to provide against the just rights of any class being sacrified to popular prejudice.*

5. I accordingly submit the correspondence for his consideration, and should Mr. Thornton's views have his general concurrence, I shall be glad to circulate them, with any modifications which he may prescribe.

Copy of letter No. 1010, *from Mr. R. Temple, Secretary to Chief Commissioner for the Punjab, to Mr. D. F. McLeod, Financial Commissioner for the Punjab, dated Lahore,* 11*th December* 1855.

1. I am directed to acknowledge receipt of your letter No. 539, of the 1st instant, with its enclosures from the Commissioner of Jhelum and the Settlement Officer of Shahpoor, relative to the recording and settlement of the rights of cultivators.

2. The Chief Commissioner considers that the preliminary *method,* explained by Mr. Thornton, *of ascertaining* which cultivators *have, and which have not, the right of occupancy and other privileges, is a good one.* The phrases also proposed for defining the right of occupancy, are doubtless correct. It may be worthy of consideration, however, whether the terms "Mouroosee" and "Ghair Mouroosee" should be lightly abandoned. They are used throughout the revenue system of all Hindoostan and half the Punjab, and they do, more nearly than any other single word, represent the thing intended. They might perhaps still be retained, and Mr. Thornton's phraseology added to them by way of explanation.

3. I am however to observe, that the Settlement Officer of Shahpoor appears to be inadequately informed as to the practice which has hitherto existed in the Panjab Settlements, with reference to hereditary cultivators. *The Chief Commissioner is not aware that a period of* 12 *years, or a rate of* 12 *per cent has ever been authoritatively fixed, or even generally adopted. Twelve years may have been occasionally regarded* as a proper term, or as a standard by which to Judge. A Settlement officer should be aware that it is the *nature quite as much as the length of occupancy, which entitles a cultivator to privileges.* Again, proprietors have sometimes preferred that their cultivators, instead of paying rent, should liquidate the government demand, and give a per-centage over and above to the land-lord. But there is *no rule on the point; local custom varies;* sometimes a cultivator pays in the above manner; sometimes he pays a money rent; and sometimes he gives a fixed proportion in kind. In the Settlement Reports already printed, much is said upon this subject, and probably those, which will, it is hoped, be shortly publised, may contain more still. The subject is an extensive one, and *is not entirely embraced in the correspondence now submitted.* The primary point seems to be that the new Settlement officers should be instructed to study the records of past experience on this head, and to *learn thoroughly the local customs of their respective districts and the opinion of the agriculturists.* As a convenient method of ascertaining these, the present correspondence may, the Chief Commissioner thinks without any objection, be circulated.

Copy of letter No. 279, *from E. Thornton, Esquire, Commissioner and Superintendent Jhelum Division, to D. F. McLoed, Esquire, Financial Commissioner for the Punjab, dated* 15*th November* 1855.

1. "With reference to your letter No. 3,785, dated 3rd instant, and as therein directed, I have the honor to submit the papers relating to entry No. 16 of my Index to Revenue Correspondence for the month of September last."

Copy of letter No. 79, *from G. Ouseley, Esquire, Settlement Officer Shahpoor, to E. Thornton, Esquire, Commissioner and Superintendent of the Jhelum Division, dated Shahpoor, August* 13*th* 1855.

I. It has, I believe, been the practice in the regular settlements which have been hitherto made in the Panjab, to consider a cultivator who has cultivated for 12 continuous years in any one particular plot of land as entitled to be recorded as hereditary cultivator (Muzara Mouroosee) of that land; be it land irrigated by wells (chahee), or by inundations from the river (silabee), or by rain (baranee). It has, I believe, been the practice to make the hereditary cultivators pay only twelve per cent to the proprietor more than the proprietor himself would have to pay, were he the cultivator of the land held by the "Muzara Mouroosee."

2. I am unwilling, without your sanction, to depart from practices that may have received universal adoption in other settlements; but at the same time, I beg to say, that I find the proprietors of land in this district averse to their enforcement. They object more particularly (and I think with reason) to a cultivator of even long standing in land irrigated by wells, being made to pay them only 12 per cent in the shape of profits, urging that he gets too much for his share—considering that he spent nothing on making a well which cost them or their fathers perhaps 300 or 400 rupees.

3. The objection to the cultivator who has broken up waste "silabee" land being recorded as hereditary cultivator of such land, is less strongly urged; but in this case, even, there is a diversity of feeling on the part of land-holders. On the western or Leia side of the river Jhelum, where I imagine matters were less settled, and property less secure than on the eastern or Shahpoor side, the right of a person who has broken up waste silabee land to be recorded as the hereditary cultivator of that land, whether such land has been a long or short time in his possession, is scarcely questioned, even though the cultivator may have been allowed to pay by a comparatively light rate in consideration of the trouble he had undergone. But on the eastern side of the river, if the land has only been a few years, say even twelve, in the cultivator's possesstion, and *he has received a recompense for his labour by having been allowed to pay by a lighter rate than was paid by the cultivators of old lands* in the same village, the proprietor objects to have such a cultivator recorded as hereditary.

4. May I request the favor of your informing me whether I am to proceed in cases involving a claim to be recorded as a "hereditary proprietor" (*sic*) according to the practice mentioned in the first para. of this letter, or whether you would wish any modifications of such practice to be introduced either in the number of years of continuous cultivation, which should qualify

a man to be considered as a hereditary cultivator, or in the apportionment of the profits between the hereditary cultivator and the proprietor of land; and more particularly of land irrigated by wells.

Copy of a letter No. 283, *from E. Thornton, Esquire, Commissioner and Superintendent, Jhelum Division, to G. Ouseley, Esquire, Settlement Officer Shahpoor, dated Murree*, 14*th September*, 1855.

1. In reply to your No. 79, of the 13th ultimo, I have the honor to give you the following instructions on the subject of determining what cultivators have a right of occupancy during payment of a proper rent, and what cultivators can at the close of the season be turned out of the lands they have been occupying, provided timely notice be given them by the land-owner.

"Kashtkar ki jisko malik zemin bedukhul neyhin kur sucta."
"Kashtkar ki jisko mailk zemin akhir sal bedukhul kur sucta."

2. I would first recommend you to avoid use of the terms "Mouroosee," and "Ghair Mouroosee;" describe the classes in your khuteonee, &c., in the terms used in the margin, or in other terms of similar purport.

3. In order to distinguish whether an individual cultivator belongs to one or the other class, a *knowledge of the length of time he has occupied is not I think sufficient. I do not see that the statute of limitations applies, because I do not think the cause of action began with occupancy.*

4. The course I have myself always followed, and which I request you to adopt, is to *have the cultivators and the proprietors assembled before some respectable official*, Sudder Moonserim perhaps; and then a list of all the cultivators having been prepared before hand from the khuteonee, the first cultivator upon the list *is to be asked if the proprietor can turn him out at the close of the year on timely notice being given.* If he says yes, the fact should be recorded, and his signature, seal, or mark, be affixed to the declaration in the presence of the assembled body.

5. If in the next case, the cultivator assert the right of occupancy, and the proprietor concedes it, this fact is to be recorded, and the proprietor's signature, seal, or mark is to be affixed to the declaration.

6. In this way out of a large number of cases, the great majority will be disposed of; and even when a case arises wherein the cultivator asserts he cannot be ousted, and the proprietor says he can, a few more questions as to the grounds of the claim and the validity of those grounds, will on the spot, adjust many of those cases which seemed likely to be contested; and it will prove either that the claim is admitted or dropped; or perhaps that it is admitted as regards certain fields, and relinquished as regards others.

7. The cases which, after this process have been gone through, really do remain and require a judicial decision should be put *to arbitration before men of the neighbourhood.*

8. In this way the *feelings and opinions of the people themselves, upon the point will soon be learnt*; and the decisions come to will serve as a guide in other cases, so that the whole process becomes simple and satisfactory.

9. If, on the other hand, any term of occupancy is ruled to convey the title, all manner of false evidence is adduced to prove or disprove the length of occupancy.

10. With regard to the amount of rent, the man, whose right of occupancy is established should pay. I think it cannot be determined without knowing approximately what the full rent of the land would amount to. He should pay less than the full rent, to render his position secure under the pressure of unfavorable seasons.

APPENDIX No. IX.

LAND-LORD AND TENANT.

SCHEDULE SHOWING THE RELATIONS EXISTING BETWEEN LAND-LORD AND TENANT, AS REDUCED TO A CODE OF RULES, SHOWING THE MAIN CLASSES OF TENANTS, THE RIGHTS AND USAGES PREVAILING, AND WHEN EXCEPTIONS ARE ALLOWED TO OPPOSE THE USAGE IN EACH CLASS.

...DULE OF THE ORDINARY RELATIONS EXISTING BETWEEN LAND-LORD AND TENANT, REDUCED TO THE FORM OF A BRIEF CODE SHOWING THE GENERAL USAGE, WITH DETAIL OF EXCEPTIONS AND EXEMPTIONS HELD TO BE SUFFICIENT TO OPPOSE THE USAGE IN THE CLASS OF TENANT CASES PREVAILING IN AMRITSUR DIVISION.

... OF ...NTS.	FURTHER DISTINGUISHED INTO	THE GENERAL CUSTOM PREVAILING.	THE EXCEPTIONS. Name of Pergunah in which such have occurred.	No.	Circumstances and Reasons for Exceptions.	RULINGS, REMARKS, EXPLANATIONS.
...g ...*der* in ...age ...ip ...*ar.)*	I. Tenants of "common holdings" belonging to proprietors "*Khata sanjee.*"	A shareholder, cultivating a portion of a "*common*" property in which all are interested, can have no right of occupancy in preference, or to the prejudice, of the remaining shareholders, so long as that holding shall remain in "common"—No right of occupancy is allowed *against the will* of the remaining share-holders. When division is claimed and made, the occupancy lapses, i. e., one shareholder, who receives the portion of land in which another has cultivated, no matter how long his occupancy, can evict the latter.	Pathankote Goordaspore Battala Shuckergurh Amritsur Tarn Taran Ajnala Reya	1	(1) Provided occupant has not exercised the powers attending absolute ownership on improvements, such as sinking of wells, planting gardens, &c. For such lands, if returned by one share-holder, an exchange must be effected; or if improvement has been effected with consent, compensation for outlay is awarded to the outgoing occupant.	Battala Committee Reply No. 16. Amritsur Do. Do. No. 16. Tenant Ruling, Settlement Paper No. 17. See case No. 6 Tenant enquiry, Statement No. 23. Also comparative statistical analysis showing results of general enquiry in 7 Pergunnahs.
				2	(2) If the person is merely occupying for an (A) absentee or for some proprietor not in possession of his share or rights, and a claim is made by latter for restitution, and intermediate outlay has been incurred; then * compensation for losses must be paid, before the occupancy of such shareholders can be disturbed.	(A) See case No. 14 Tenant enquiry statement No. 23. * Ruling in Settlement Paper No. 20.
				3	(3) Provided, too the land is wanted only for *personal* * *cultivation* of the rightful parties, and not to hand over to another or new tenant; in which case the occupant has a preferential right over a third party.	* Battala Committee Reply No. 2 (Ghur loree.)
	II. Tenants of "separate holdings;" or one co-partner cultivating for another in a separate holding "*Khata vakree*" "*Hissa Chook*" "*Mangamee.*"	Whenever the land-owner chooses, he can evict; whether occupying co-partner gives up freely or not. It matters not if they cultivate together, in common, or separate one from the other, or whether entire holding is in occupancy of another member of the brotherhood. Such an occupant cannot object on the basis of tenant rights, as he received the land on a *verbal understanding to give up* whenever required to do so. This custom is known under name of "*Hissa Chook,*" who took up the share for a time, and "*Mangamee*" or one who lent the land on being asked. If any claim is advanced, it must be made for *ownership* (**) and not for the tenancy.	Pathankote Goordaspore Battala Shuckergurh Amritsur Tarn Taran Ajnala Reya	4	(1) Provided, the occupancy did not arise out of an order of a Kardar or of Jageerdar, or Ruler of the day.	Battala Committee Reply No. 16. Amritsur Do. Do. No. 2.
				5	(2) Or that the land was not made over for cultivation as unto an ordinary tenant, with permissive occupancy, by the so called land-owner; who has *never* previously exercised power of grant, lease, exchange of fields, or eviction.	Do. Do. Do. No. 16. Ruling in Settlement Paper No. 20. See case No. Tenant Enquiry Statement No. 25. See intance in case No. 1 Tenant Enquiry Statement No. 23. Also comparative statistical analysis.
				6	(3) Or, having made over the land to cultivate, the occupant has strengthened his title, during neglect of real owner, by improving the land, and payment of revenue losses, &c; (*) in which case eviction is conditional on adjustment of account and compensation.	* Battala Committee Reply No. 3.
				7	(4) Or that the owner, being a widow, or some indigent person who cannot personally cultivate himself, then the right to evict is qualified, and the occupant is considered to have a *preferential right* to that of others.	(**) As in holding No. 4 in Tenant Enquiry Statement No. 21.

			8	(5) Or that the land belonged to a lapsed estate or to an absentee, the right of succession to which has come to a new owner, and the occupant has always held in lieu of former owner,—then the right to evict is so far qualified that the occupant is considered to have a *preferential right*, unless the new owner wishes to *cultivate* (*) *himself*.	(*) Battala Committee Reply Nos. 2 and 13.
			9	(6) Or where the owner has received a new title arising out of a sale effected by Government, then the occupant cannot be evicted so long as he pays rent and revenue; but if the sale be a *private* one, then he can evict only if he wishes to cultivate (M) himself.	(M) Battala Committee Reply Nos. 2 and 3.
1. Of long standing with occupancy inherited from father to son " *Kudeemee*" " *Moodlee*" " *Vasee*" " *Pindwala*" " *Bootamar*."	Land-lord can evict in all cases, no matter how long the period of occupancy (S.) where the holder is his (asamee) own tenant, i. e. cultivating any land forming part of his *individual* estate; his power to evict being only so far qualified by the general custom (1) that he abstains from enforcing this right, if he has lands held by other tenants who can be made to give up before those entitled to greater consideration owing to tenancy; (2.) that eviction is required for (f) personal cultivation, and is gradually enforced, a few fields being taken at first, then more afterwards, and at intervals, and provided timely notice is given. Generally, when fields are taken away, others are given in exchange from the common or less valuable lands.	Puthankote Goordaspore Battala Shuckergurh Amritsur Tarn Taran Ajnala Reya	10	(1) Provided that tenant was not located by Kardar, or agent representing the Ruler of the day, and the tenancy arose independent of the action of owner now so recorded.	Ruling of Battala Committee Answers Nos. 4 and 7. Amritsur Committee Nos. 2 and 4. (S) Amritsur Committee Reply No. 5.
			11	(2) Or if tenant, being located by individual owner, has formerly incurred outlay (P), taking share in Revenue (P) burdens of village, or borne losses (P); in such cases if the latter, having improved in circumstances, wishes to evict, his power to evict is conditional on timely (S) notice being given, and on payment of full compensation for losses so incurred.	(P) Battala Committee Reply No. 3. (S) Battala Committee Reply N. 3. (f) Battala Committee Reply Nos. 2, 5 and 6.
			12	(3) Provided that tenant did not originally reclaim (f) the land from waste (Bootamar.)	See case No. 7 in Settlement in Sealkote Paper. (f) Battala Committee Reply No. 3.
			13	(4) Or was not located on a private understanding (R) of indulgent occupancy from the time the village was originally founded (Moodlee), the owner being able to show that he *has* exercised the power of eviction by lease, exchange of fields, and the like. In such cases, eviction is not carried out till compensation (H) is awarded for losses, either by other fields being given to cultivate, or by actual payment (H) for losses, timely notice (K) to quit being accorded.	(R) Battala Committee Reply No. 3. (H) Battala Committee Reply Nos. 3 a... (K) Battala Committee Reply No...
			14	(5) Provided that wells have not been sunk, nor gardens or groves planted, or that the land is not held by a large family of tenants ancestrally connected, who have held from father to son (C), dividing the land according to ancestral descent, as in case of proprietary classes. Here eviction is scarcely ever enforced, unless the tenants break down, or become unable to carry on cultivation themselves—The owner has only a concurrent right to redeem the cultivation over and above any right on part of tenant to transfer cultivation to other tenants.	...e Reply No. 3. (C) Battala Com...

		Pathankote	15	(6) In Rajpoot villages, under the hill ranges, tenants have held for very long time, and around their cottages, little holdings called " Lahree" viz : parcels of grounds planted with hedges and trees and with detached residences built on the same. Here it is not customary to evict from such holdings so long as party resided in village.	
		Pathankote Goordaspore	16	(7) Where land-lords themselves are absentees living in other villages. such as muhunts, indigent females, owners of several villages who reside only in one village ; and during their absence, or neglect to exercise the full proprietary rights, have allowed tenants to build a new location with all the characteristics of a village, and have permitted them to live unmolested for 2 or 3 generations, and *never* exercised the power of lease, exchange of fields,—here, too, it is not customary to evict, or if eviction is carried out, it is always done gradually, the fields of recent holdings being absorbed first and before that of indulgent cultivators, gradually, and at intervals—due notice being served.	
II. Ordinary village servants, " *Kumeen*" " *Sepee*" " *Choora*" " *Kama*."	According to general usage, servants of the village, such as carpenters, barbers, smiths, sweepers, watchmen and the like, hold land on condition of service due either to entire community or to private individuals; and so are completely *at the will* of their masters, or employers, being liable at any time to eviction on their failing to perform services. (1) The " Kumeens" receive allowances chiefly in cash or grain wages, but often allowed to cultivate land on a mutual understanding that it is to be given up if required by their employers. So long, then, as they perform the services, and *so long only*, the right to hold from father to son is permitted. (2) Sometime with the " *Sepees* " subordinate private individuals, the master *excuses* payment of all rent and revenue, bearing the burden himself in order to secure more ready and faithful service. (3) The *Chooras* are always subordinate. They are considered to have no title to cultivate, except *at the will of their* master and in effecting eviction they are the first to be called upon to give up their lands for others to cultivate, no matter how long the occupancy. This subordinate position is universally admitted and described by the term " *Ahunsar*" or under agreement.		17	(1) Provided that the cultivator did not receive the land from parties other than their present masters, in times previous to acquisition of property by the land-owners.	
			18	(2) Or that the tenant did not come with the land of which he is occupant, being transferred from some other estate at time of boundary dispute, or by reason of location by Kardar, or Ruling power of the day ; and the holder of this class, " Kumeen," or " sepee," has *never* been really subordinte, *nor performed village or personal service*, owing to above reason ; ordinarily eviction cannot here take place to favor another tenant.	
				The sense of the country would only allow the preferential right, but not so far as to bar eviction, if land-owner require for his own personal cultivation, being himself in want of land.	See case No. 1 Tenant Enquiry Statement No. 22. See case No. 18 Tenant Enquiry Statement No. 23.
			19	The only exceptions likely to arise here are of the nature recorded under head of tenants of long standing (" Moodlee" above) ; but the reservations are certainly less frequently considered, if at all.—Sweepers being the lowest of all menials in a village, little regard would be paid to their wishes in former times, when they were looked upon with contempt.	See Case No. 8 Tenant Enquiry Statement No. 22. See cases Nos. 5, 7, 19 and 35 Tenant Enquiay Statement No. 23.

I. Descendants on the female side. ("*Dhotra*") ("*Nuwassa*") Issue of widow by former marriage ("*pichlug*")	So long as this class of relatives continue to reside in the village on amicable terms, land-lords seldom molest them, but the claim of a "Pichlug" is less regarded than that of "*Dhotras*" who are generally allowed to hold on life tenures.	Amritsur Tarn Taran Ajnala Reya Pathankote Goordaspore Battala Shuckergurh chiefly in Battala	20	If "Dhotras" and "Nuwasas" received land from ancestors far back, and have enjoyed full profits, they are often admitted to higher position of proprietors.	Battala Committee Reply No. 17. Amritsur " " No. 17. See Specimen Village Title Deed with Sealkote Settlement Report.
II. Other degrees of relationship "*Sak*" "*Koorm*"	Generally, the occupancy of a person in position of "Ghurjewhaee" is regarded. Relatives are mostly introduced for purposes of helping and supporting indigent land-owners. The occupancy arises out of an act of their own will or approval. If there was any agreement, verbal or written, the terms of that agreement are enquired into and enforced, and right to evict is regulated accordingly. If no agreement was given, then it is usual not to evict during the life time of the occupant, but after death, the land-owner is at liberty to assume possession of the holding or continue it to his heirs. Disputes are settled by local Punchayat, but these disputes are not frequent.		21	(1) In event of the real owner, who introduced his relation, dying, the parties who succeed to such estate cannot evict until the terms of the existing agreement, whether written or verbal, have been enquired into and fulfilled.	
			22	(2) If such relation was introduced from another village, gave up his own lands there, to come and take up the responsibilities of his deceased relation; there too eviction cannot be customarily enforced until after death of the occupant, and till a Punchayat shall decide whether his tenancy is entitled to further "protection," or not.	
I. Mortgagees "*Girweedar*"	No mortgagee can put forward claim to a right of occupancy, after redemption has taken place. Repayment means always the right of payer to obtain immediate occupancy.	Battala Ajnala	23	(1) If mortgagee has sunk wells, laid out a garden, or otherwise improved the property during his occupancy, the redeemer cannot evict till he has reimbursed all outlay of such a kind.	
			24	(2) If occupancy dates anterior to mortgage, then objections to occupant must be considered with reference to the position held by him according to any of the classes of tenancy, to which he belongs, as in this schedule.	
II. Creditors or any parties holding a lien on the land "*Karzadar*" "*Kissara laya*"	If land has been hypothecated to any person in the position of a creditor or the holder of a lien on the estate, till the adjustment of some running account, legally capable of adjustment, has been effected; as soon as such adjustment has taken place, the debtor can assume occupancy of his property.		25	Same as above.	
Ordinary tenants-at-will living in other villages. "*Paheekasht*" "*Vandee*" "*Oprahoo*" "*Pahee.*"	Universally, such tenants can be evicted by land-owners no matter what length (*) their occupancy, as it is presumed, they received the fields for cultivation from individuals according to the usage understood and accepted, that they might hold on only from year to year, *subject to the will of the owner*.	Pathankote Goordaspore Battala Shuckergur Amritsur Tarn Taran Ajnala Reya	26	(1) Provided they were not tenants transferred in occupancy of the land from some other village at time of boundary dispute, the prescriptive occupancy having risen out of circumstances quite independent of a subordinate relation to present land-owner, who may *never* have given the land on lease, exchanged fields, or the like.	Ruling of Battala Committee Answer No. 4. Amritsur " " No. 4. Do. " " No. 5. * Battala Committee Reply No. 5.

			27	(2) Or where the fields held were part of an estate on the border of two villages, and originally were occupied in absolute ownership of the party whose partial occupancy has been included in one estate, he residing in another and adjoining estate, and *no act of permission*, lease, or exchange of field can be shown.	
			28	(3) Or where the occupants where located, not by the land-owner, but by some Kardar or agent representing the ruling power in part of an estate recorded as " common" to village or sub-division of village, being under *no actual subordination to any individual land-owner*, and it being proved that they were so admitted, to prop up the revenue of the state. In the foregoing cases eviction can only take place, when land is required for *personal cultivation*. The tenant has right of preferential occupancy over all others, and if losses have been borne, cannot be evicted till adjustment of accounts has been made.	
			29	(4) Instances occur where a party occupying has never received the land from present owner, but from some former owner who has absconded, or whose estate has lapsed, the holder being in no way indebted to the present owner, nor having fulfilled a position of constructive occupancy. Here too the assessors would award complete protection as in the case of residents of the exceptional classes (1,2,3,8,7 under heading (II), allowing eviction only when land is required for *personal cultivation* compensation, and notice being given at time of ousting.	
			30	(5) In cases where the property is not inhabited ("Bechirag" villages) and the owners reside out of the area in some neighbouring villages, where the tenants reside, though the latter are equally (‖) here described as "Paheekasht," they are treated as tenants of 2nd class, and will come under same rules.	(‖) Battala Committee Reply No. 4.
			31	(6) Same as former, where village is inhabited, but tenants and owner live in separate villages. Here too eviction is allowed only when required for *personal cultivation*, as in the preceding.	" Bechirag" villages.
I. Holders on revenue free tenure of entire village, cultivating some portion of the area within the same, in person or through an agent, " Jageerdar"	In former times, as long as Jageerdar or his agent had a footing in village, they usurped the plenary power of eviction, and so, if they cultivated, they were left unmolested; but as soon as jageer lapsed, land-owners felt they could assume occupancy of land.	Pathankote Goordaspore Battala	32	(1) Unless the occupancy, accompanied by residence, was confirmed by such act as that of sinking wells forming gardens; here the right to hold on was not disputed so long as the wells or gardens were kept up.	
			33	(2) If Jageerdar resided and depended on profits of this cultivation, then so long as Jageer remained, or the Jageerdar had heirs to succeed, the right of eviction was never exercised.	

			34	(3) If Jageerdar had built a grave-yard or cenotaph, or had established some footing of this kind in support of his religion, or of private property, then such occupancy was not liable to disturbance.	
II. Holders on a revenue-free tenure of small parcels of land in a village, cultivating himself or through an agent, "*Mafeedar*."	So long as the Mafee was held and enjoyed, occupancy was never disturbed. But after resumption, land-owners did consider the occupancy of such lands (A) reverted to them, and they could sue for eviction.		35	(1) If held on long occupancy by Mafeedar himself, and where, resumption or lapses taking place, a lease has been given @½ asset rates; so long as rent and revenue are paid, such occupancy is admitted entitle to "complete protection."	(A) As in case cited in holding No. 5 Tenant enquiry Statement No. 21.
			36	(2) All 3 exceptions opposite Jageerdars would also apply here with equal force.	
Lands attached to Temples, Mosques, Hospices, Faqueers' huts Tombs, "*Thakoordwara*." "*Masjid*" "*Dhurmsala*" "*Takia*" "*Daira*" "*Khangah*,"	As the holders are always located by the proprietors for the religious weal of the community and the mutual understanding on which the land was granted was that of specific performance of certain obligations; so long as those obligations or fulfilled and the free holders occupy a subordinate position; the right to evict is not sanctioned by local usage. If however, there is abundant land attached to such places and it is left uncultivated, or not turned to account, and the holder does not cultivate himself; the right of an owner of land to assume occupancy in preference to a tenant of the free-holder is admitted, and eviction of such a party *is* allowed.	Pathankote Battala Shuckergurh Amritsur Tarn Taran Ajnala Reya (Chiefly in the two last.)	37	If the special object for which the land was assigned is not carried out, or the grantee proves troublesome or insubordinate, then the right to take the land under personal management or occupancy is allowed under reservations, similar to those given under 2nd class of tenants.	
			38	If, however, houses or buildings have been erected, or wells founded of a permanent character, and the grant is of very old date, then right to "*complete protection*" is voluntarily agreed to.	

E. A. PRINSEP,

Settlement Commissioner.

LAST SETT[LEMENT]. *Tenants upon who[m Go]vernment might c[laim a] right according t[o its] own views.*	Ordinary Mafeedars, ...	14	10	194	109	3	309	323	962	
	Jageerdars, ...	17	15	19	...	...	...	...	51	
	Persons who pleaded location by Hakim or Kardar, ...	...	...	1	31	...	...	...	32	
	Total, ...	38	25	234	149	6	378	404	1,234	
	Cases differing from preceding, ...	1,240	958	642	363	...	229	235	3,767	
	Tenants declared hereditary cultivators by order of Court at last settlement, ...	24	152	215	112	...	10	2	515	
Total of hereditary cultivators as recorded at last settlement, ...		1,887	1,894	2,558	1,799	263	1,184	884	10,469	
PRESENT SETTLEMENT. *Aspect of tenants who pay and who do not pay "rent."*	Such as are entered in the records as paying *no* "rent,"	38	67	761	1,179	138	941	237	3,261	(C) See position Nos. VII and VII[I] in ditto.
	Such as *do* pay "rent,"	1,849	1,827	1,897	620	125	243	647	7,208	
Result of enquiry now made with the aid of Assessors.	Completely protected, *i. e.* hereditary cultivators,	31	510	551	143	20	650	181	2,086	(B) See position No. V in ditto.
	To hold for 1 or 2 generations, ...	8	121	194	47	2	22	18	412	
	Do. on conditions mutually agreed to, ...	45	70	103	...	11	5	296	530	
	On leases for fixed periods, ...	1,074	961	1,489	870	174	181	298	5,047	
	Mere tenants-at-will as pronounced by Assessors,	236	136	114	605	46	296	27	1,460	
	Who of themselves admit they are tenants-at-will, ...	457	392	95	63	8	27	61	1,103	
	Tenants who claimed to be recognized as proprietors, ...	36	5	12	71	2	3	3	132	
Total of same No. of cultivators adjusted by enquiry, ...		1,887	2,195	2,558	1,799	263	1,184	884	10,770	

E. A. PRINSEP,

Settlement Commissione[r].

TATISTICS SHEWING THE RESULT OF ENQUIRIES MADE REGARDING THE *STATUS* OF HEREDITARY CULTIVATORS; HOW MANY OF THEM NEVER HAD A RIGHT OF OCCUPANCY BEFORE LAST SETTLEMENT, AS IS PROVED BY LOCAL USAGE, AND THE AWARD OF ASSESSORS IN 7 PURGUNAHS OF AMRITSUR DIVISION.

	Last settlement entries and present settlement enquiries compared.	Names of 7 purgunahs enquiried into.							Total.	Remarks.
		Puthankot.	Goordaspoor.	Butala.	Amritsur.	Turantarun	Ajuala.	Reya.		
Entire No. in Purgunah.	Number of Estates, ...	348	706	495	368	353	338	494	3,102	
	Tenants having "right of occupancy" according to the record, ...	4,310	5,092	4,648	3,753	3,149	2,854	2,558	26,364	
	No. of estates now enquired into, ...	262	360	470	219	30	73	261	1,675	
Class of tenants wrongly recorded as having "right of occupancy" according to local usage.	Co-partners holding one of another, ..	41	98	280	296	64	54	20	853	(A) See position No. V in Me
	Members in a common holding, ...	17	16	33	107	..	1	4	178	
	"Sepees," sweepers and the like, ...	32	118	191	118	30	49	13	551	
	"Kumeens," village servants, ...	106	286	468	443	40	197	48	1,588	
	"Paheekasht," living in other villages, ...	387	237	470	207	121	161	151	1,734	
	Agents for their masters, ...	1	1	...	...	...	2	1	5	
	Servants acting for absentees, ...	...	...	1	2	1	1	...	5	
	"Pichlug" near relatives who cannot inherit,...	1	3	33	2	1	1	6	47	
	Mortgagees—holding since mortgage, ...	...	...	1	...	...	1	...	2	
	Total, ...	585	759	1,477	1,175	257	467	243	4,973	

APPENDIX No. X.

LAND-LORD AND TENANT.

STATISTICS SHEWING RESULT OF ENQUIRIES
IN 1,000 HOLDINGS.

LAND-LORD AND TENANT INQUIRY.

(REVISED SETTLEMENT).

AMRITSUR DIVISION,

PUNJAB.

1864-65.

(PART II).

Further Papers and reports by Mr. E. A. Prinsep, Settlement Commissioner on the Tenant Right question; and soliciting final orders :—

A. Letter to Financial Commissioner No. 12, dated 12th January, urging the propriety of re-enquiry and a 2nd larger Committee.

B. Memo. to Lieutenant-Governor, dated November 23rd 1864, urging that orders be passed on the questions, and enclosing :—

(1). Letter to Commissioner of Amritsur and Jhelum explaining procedure and asking opinion.

(2). 5 Tenant rulings.

(3). 3 Land-lord and tenant statements.

(4). Reply, Memo. by Commissioner of Amritsur objecting to re-enquiry, with remarks by Settlement Commissioner.

C. Report to Financial Commissioner requesting orders of Government as to the general principles upon which Judicial officers were to try their cases.

D. Letter to Do. No. 204, requesting early reply.

E. Do. Do. No. 78, begging that all the papers might be printed.

F. Do. Do. No. 199, again seeking instructions, or settlement work would be stopped.

G. Reply of Financial Commissioner No. 2,279, agreeing to share responsibility with Settlement Commissioner in recording results of new enquiry.

H. Reply of Financial Commissioner No. 250, reporting his mode in doing so.

I. Extracts from Settlement Commissioner's report for 1864-65, urging that final orders Government be given, as Settlements were drawing to a close.

A.

Report from Mr. E. A. Prinsep, Settlement Commissioner, Amritsur Division, to Major E. Lake, Financial Commissioner, Punjab, No. 12, date 12th January 1865.

As the late Tenant Committee was very much pressed for time, and one of the chief points I was anxious to press upon their attention was not taken up or considered in the way the importance of this question deserved, I beg to make the following observations, and to request that the proposals I now make, may be laid before His Honor the Lieutenant Governor for his instructions, should he deem them worthy of attention.

2. You will remember that the chief issues taken up were: I. The Law. II. The facts. III. The Policy.

3. The first and third have been disposed of under certain modifications and restrictions, favorable to the view put forward and acted upon by me hitherto.

The second was taken up late in the day. It was as much as we could do to find time, even rapidly, to get through the schedule * shewing the "*general custom*" and "*exceptions to usage*" under the several classes of tenants, which appeared to me to take in all that was necessary regarding each in a general way.

4. Regarding class (A, I, and II,) shareholders among the proprietary body, cultivating on the land of another; (B, II,) village servants, (E,) non-resident tenants; you will remember that there was a very strong expression of opinion in accordance with the conclusions recorded in the schedule, from all the native gentlemen who were members of the committee. Putting aside the exceptions, and with this reservation that more exceptions may be added, as they arose in different parts of the country, they emphatically stated that according to general usage, tenants were not considered to have a right of permanent occupancy contrary to the will of the proprietor. They were questioned several times, and they repeated this to be the conviction in their minds, drawn from past experience and a knowledge of the several districts in this province in which they had held office.

5. Now if you will examine the statistical return † shewing the results of enquiries made by me in 10,000 holdings in 7 pergunahs, where, as you know, the parties were confronted, and the figures here shewn are the *bona fide* facts collected after confronting, examining, and taking the sense of the entire villagers assembled with the aid of assessors, who could weigh the truth of objections brought by tenants by immediately appealing to any other of the tenants, whose interest it certainly was to speak out in their own favor, you will perceive that the three great classes of tenants referred to in preceding para: stand thus:—

A.		I. Co-partners holding one of another, ...		853
		II. Members of a common holding, ...		178
B.	II.	"Sepees" sweepers and the like,	551	
		"Kumeens," village servants,	1,588	2,139
E.		"Paheekasht," living in other villages, ...		1,734
			Total,	4,904

* See Appendix No. IX part I.
† See Appendix No. X to part I.

A.

6. In other words, excluding the exceptions, a very large proportion, viz., one-half, is recorded to be in that position, upon whom have been *conferred* a right of permanent occupancy, the proprietors being no more able to take the fields into their cultivation when they wish to do so, although (the exceptional cases being regarded) these three members of the committee, representing as it were native thought and feeling, declare they were generally at the will of individual proprietors.

7. I lay stress upon this, as I perceive an unwillingness on the part of some members of the committee to admit the fact of errors being committed at last settlement. They deny that to be "manifest error" which was silently assented to and acted upon since last settlement. This too I understand is the view taken by His Excellency the Viceroy, and I believe you to a certain extent share in this opinion.

8. To meet this, I feel it to be of the greatest importance to urge again and again that consideration must be had to the way in which tenants were brought upon the record as "hereditary cultivators." I am sure it needs no repeated assertion on my part for it is universally admitted that there were but few contested entries at last settlement. Of the 10,000 alluded to as brought under enquiry, only 515 are discovered to be of the disputed kind: all the rest were uncontested, and why? The Putwaree received for his instructions that all tenants at time of measurement who residing in village had *occupied for* 12, *and non-resident for* 20 *years,* were to be entered under the term "mouroosee" a term not known in the country. Thousands were thus recorded, and have so remained to this day.

9. I believe no one will deny this fact. The entry arose from a mistaken order on part of Settlement Officer. He had no authority to lay down these periods as the *sole* test of what constitutes a right of occupancy. On the contrary, it was afterwards ruled by the highest authority in the province (the Viceroy himself) that "there was no rule," "custom was to be followed in each case," and "the 12 year rule had never been authoritatively fixed." This order was recorded in 1855, one year after the settlements in the greater part of this division had been completed; so that it is apparent the authorities knew then, and knew early, the mischief that had been done, and this is now the whole matter under consideration. It is generally believed that it was on this account, that it was found to be peremptorily necessary to issue Financial Commissioner's Book Circular No. 33 of 860, to prevent Deputy Commissioners from supposing, that they were to receive the settlement entries as correct, and a special clause is there inserted allowing complaints to be heard again *on their merits* as between the two classes, whose interests are now being considered.

10. What I wish to urge then from the foregoing observations, is this: that when the evil arose from a misunderstanding by our officers; when the order which gave it brith was a mistake; when the mistake was known in 1855; and remedial measures were then taken to undo the mischief: is it fair now to say that this form of assent given by proprietors, and the entry not having been objected to within 10 years, must be regarded against the interests of the land-lord class?

11. If we really wish to know the reason why the proprietors remained silent, it is this: that in the few contested cases which were

A.

decided, all the officers laid so much stress on the rule of prescription, and so little, if any, to the real issues arising out of local usage; such as the power to evict as (1) exercised previously, and (2) to be exercised in future when fields were required for personal cultivation, that when the land-holders saw it was a new rule being pursued and not village custom, and they supposed this new rule was a correct one, ordered by a new Government under which they had come; it is not difficult to perceive how ignorant peasants should remain quiet, and accept the doctrine that, the settlement being over, nothing could then be done.

12. That this is the fact, I can only state that I have been constantly informed when I asked the present complaining parties why they did not object before, that they thought the "adverse entry had been made under a general order of Government, and that it could "not be rectified till the new settlement."

13. I beg to record my opinion most emphatically against this doctrine that because erroneous entries were not openly objected to by a large mass of the people, only a few years ago, under an erroneous impression; this supposed assent should now be ruled to be a bar against correction of past error, or any further adjustment in an equitable way of rights and interests which we now know to exist, but which we did not really or fully understand before.

14. I cannot help thinking that, the reason why the committee took this view is attributable to the fact, that they would not believe in the reliability of the statistical results given in by me, and the conclusions drawn from them. Of course it was scarcely to be expected that in a sitting of 6 hours, officers of large experience could be induced to change their fixed opinions which have been the growth of years, enquiries in other fields, under different circumstances. But, unhappily there was no time allowed for discussion or marshalling of proof. So convinced am I of the general accuracy of the conclusions I have arrived at on these facts, after a constant application of my mind for a year and a half to the several bearings of this question, that, I feel, if only some of the members could have been placed in the same situation to meet the same difficulties as I have been, they really could not conscientiously arrive at any other conclusion.

15. As I had not time to bring up "my strong reasons" I beg to summarize them here; (1) first we have the enquiry in 10,000 holdings: (2) we have the decisions arrived at in 7 pergunnahs on these facts: (3) we have been personally present during attestation of some 50 villages in different parts of the country: (4) we have the recorded opinions of the Buttala committee: (5) also that of the Amritsur committee: (6) we have the opinions given by several Revenue Officials of tried experience: (7) we have the opinion of native gentlemen of this country such as that of Raja Sahib Dyal: (8) we have the general testimony of some 20 officers of the administration, who declare their belief that land-holders did exercise the power of eviction: (9) also the recorded views of settlement officers in 14 districts, who unite in testifying, that the right of permanent occupancy was either *created* or *conferred* by British Government at last settlement, notwithstanding that it was partially though not fully then known to them, that power of eviction was exercised, beneficiary re-

lations did exist, and customs did vary, though these were not then easy to unravel;

(1.), (2.), (3.) Appendix X, Part I.
(4.) Appendix III, „
(5.) Appendix IV, „
(6.) Appendix V, „
(7.) Appendix VI, „
(8.) Appendix II, „
(9.) Appendix VII, „
(10.) Minute of Tenannt Committee.

(10) and we have now the strong expression of the 3 native members on the committee, in regard to 3 classes of persons recorded as hereditary cultivators, who in number perhaps amount to a proportion of say, 4,000 out of the 10,000;—all which evidence is very strong and convincing when taken together, to establish the 2nd issue, the fact of very great and very bad errors having been committed, subversive entirely of the ordinary relations which existed up to last settlement between a superior and inferior class of landholders, and corroborative of the existence of ownership, with all the incidents of lease, exchange of fields, subordination, mutual relations, and power of eviction, in unmistakeable terms.

16. It is upon evidence of so extensive and overwhelming a character that I have been led step by step, and month by month, in a period of 18 months, to give up my old views, and to make a ready confession to Government, that I have hitherto worked upon insufficient knowledge. I perceive distinctly now, what I did not realize before, that considerations of revenue management have influenced me too much, when dealing with the rights of the landed classes; and as these new convictions have been formed in no hurried way, I deem it to be my duty to state them fully and frequently, for the information of the Government I serve. It is for this reason that I thought it better to place this question before a committee, as it was too responsible a position for any one individual to come to a final decision.

17. As however the committee have not I believe pronounced their opinion on the 2nd issue, particularly whether I am right in trusting the mass of evidence obtained in regard to the nature and extent of the errors committed in determining the real relations between the two classes, I beg to make the following proposals with a view to bring greater attention to the matter, than a two days' sitting of committee can be ever believed to have given.

I. That the accompanying schedule of the general usage and exceptions herewith annexed, shewing the conclusion come to, and arranged in the form of a brief code, may be printed in English and vernacular and be circulated to selected Deputy Commissioners and Native Extra Asssistant Commissioners, whether having settlement experience or not, for an expression o opinion.

II. That another general committee should meet a month or six week hence, place and day being fixed, in which all these officers should assembl to consider and discuss verbally the practicability of drawing up some genera principles for future guidance *on the basis of that schedule*; so that we ma have some uniform system of rules, defining by a detail of exception circumstances, the positions which shew where a right of occupancy has th sanction of local usage and the approval of our best officers.

III. That selected native gentlemen of probity and keen intelligen who have hitherto shewn a loyal co-operation with Government in all measu

directed for the good of the province, be also called upon to give their opinions, and attend at the meeting.

IV. That this general committee be composed of a large number of members, say 4 English officers, and 4 Native officers, having settlement experience; 4 District Officer, 4 Native Kardars of the old school; 4 Commissioners of Divisions, and 4 native gentlemen not connected with the Government;—in all 24 members, with a president.

V. That they be called upon to read the papers before hand, and give their opinions before the committee, which could be taken down then and there by a short hand writer. It is possible to make this arrangement, and it would save a deal of needless writing and reading of papers as only the general result of opinions expressed on each point would be recorded, and Government would then be in a better position to know, whether the present enquiries made by me, and the conclusions I have come to are really reliable, as a basis upon which to take any action that may be found proper and inevitable hereafter.

18. In support of the remarks above offered, I forward the following papers, and trust I may soon receive the instructions of yourself and of His Honor the Lieutenant Governor on the result of the discussion of the committee, as it seems to me likely they may bring about new complications in my endeavours to adjust the relation of Land-lord and Tenant.

(1.) Schedule of general usage and exceptions in regard to tenant relations.

(2.) Statistical result of enquiries made on 10,000 holdings in 7 pergunnahs, shewing the old and present status of so called "hereditary cultivators', compared.

(3.) Copy of my original letter No. 196, dated 28th April 1863, asking for instructions.

(4.) Financial Commissioner's Circular No. 69, of 1863, calling for opinion of Deputy Commissioner: extracts given to meet the issues put.

(5. Opinion of a committee held at Buttala on 30th May 1863.

(6.) Do. of committee held at Amritsur on 14th June 1863.

(7.) Replies of selected native revenue officials.

(8. Do. of „ native gentlemen.

(9.) Extracts from reports of settlement officers for 14 districts, with remarks.

(10.) Correspondence in the year 1855 in which Messrs. Thornton, McLeod, and Sir John Lawrence, Chief Commissioner, lay down the new principle upon which our present enquiries are based.*

* These papers Nos. 1 to 10, will be found as Appendices to Part I.

A.

19. I consider all these papers should have an attentive perusal. When added to the minute given by me to His Honor the Lieutenant Governor with other papers, (a) when in camp; and which have been forwarded to you to be placed before the committee; I feel sure no impartial reader can come to any other conclusion than this, that there is a very strong case made out for re-opening the status of the so called hereditary cultivator on the basis of pre-existing usage and relations known to exist.

(a) (1.) Memo. by Settlement Commissioner, dated 23rd November 1864.
(2.) Letter of Do. No. 595, dated 16th September 1864, to Commissioners of Jullundhur and Amritsur.
(3.) 5 Printed Tenant Rulings.
(6.) 3 Land-lord and Tenant statements, shewing mode of attestation.
(7.) Memo. by Commissioner of Amritsur, dated 12th October 1864, with remarks by Settlement Commissioner.
(8.) Statistical result of enquiries made in 7 pergunnahs as now also annexed.

B.

Memo. on the subject of the tenant question, as bearing on the progress of Settlement operations in Amritsur Division.

In making the records of Settlement there are 3 stages to be passed:—

I. The measurements.

II. The attestation.

III. The fairing of papers.

The first stage in the two districts of Amritsur and Goordaspoor was thoroughly completed in May 1864.

Since then the second stage has been taken up, and has now been almost completed in Goordaspoor; and very nearly so in Amritsur; only 100 villages remian out of 2,000 in the former: and 300 out of 1,300 in the latter.

In Goordaspoor one pergunnah was quite finished as regards the 2nd stage in the first week of September. In Buttala pergunnah only 30 villages remain. There are 4 pergunnahs, where we shall have to stop work, unless some orders are passed to enable the establishments to proceed into the third stage.

The third stage cannot be taken up till the "khewut-khuteonee" or *abstract papers of holdings occupancy and liabilities* are in such a state, as that all the matters requiring adjustment or correction, have passed completely out of the attestation stage.

This cannot be done till we know exactly what are to be the future relations of the tenant class; what their terms of occupancy; and the rent or rate of rent they are to pay.

The rent, or rate of rent, cannot be properly settled, till we know the real (not the old recorded) position of the tenant class; after confronting one before the other, and giving to either the benefit of a full enquiry.

It is considered by those who are averse to disturbing the existing status, (and Mr. Melvill, Commissioner of the division, takes this view and has recorded a minute on the subject) that as the rights of "hereditary cultivators" were created by Settlement Officers, acting under general rules; were brought to record; and that record was formally sanctioned by the Government; the existing and recorded status has so far been guaranteed by Government that it would be a breach of faith to re-open the question at all. That therefore any enquiry bringing to record a state of relations in the new settlement, contrary to what was recorded before, is improper and cannot be done; that nobody has the power to disturb the position of a class in this way.

The view I take of the marter is this:

I. That no one had the power at last settlement to *confer* or *create a right of* tenancy contrary to local usages.

B.

II. That the British Government has publicly declared in all regulations bearing on the question of land, that it would solemnly maintain *the rights and customs that existed.*

III. That, it is the business of a settlement merely to record *the existing state of* things.

IV. That, *no regular enquiry* was made at all at last settlement, into the custom or mutual relations existing; quoad the different classes of tenants.

V. That, if such customs are now discovered at time of a revision of settlement, and enquiry shews (and is strongly confirmed on all sides by the most experienced officers) that *great mistakes* have been made; it is clearly the duty of all those who carry out that revision to rectify such mistakes.

VI. That it is proved there was *no enquiry* at last settlement, from the simple fact that there is no mention of it in the settlement report. Indeed, there is *no mention* of *any rights* or tenures, or the *terms* of *tenancy* as founded on local usage, either in the body of the report, or in any of the old khuteonees.

VII. That, on the contrary, it is discovered that even as regards one-third of the so called "hereditary cultivators," there was *no rent fixed* at all at last settlement, nor has any payment whatever been made for 11 years in consequence of this strange omission.

VIII. That, in the regulations which protect the right of tenant occupancy, viz., regulation VII of 1799, in class 7, section 15; and regulation XVIII of 1803, class 7, section 32, the words are, cultivators have a "right "of occupancy only *so long* as certain rent, or a rate of rent. determinable on "certain principles, according to local rates or averages, be paid."

Therefore, if one-third have not paid any rent, they have no legal right, In this view there is injustice done to both landowner and tenant, owing to the imperfect state of the old record; to the former, that no rent was fixed, by which for eleven years nothing has been received; and to the latter that, though protected by the entry "hereditary cultivator," really and legally he can be evicted, any day, under the general laws.

IX. That these *mistakes and* omissions have *long been known* to the authorities. So far back as 1853, one year after the conclusion of last settlement; for we find the matter was officially recorded, see the extract para: 386, No. 588, dated 3rd May 1851, from Financial Commissioner to Commissioner, then Chief Commissioner (the present Viceroy) by the Financial Commissioner, who instructs the Commissioner of T. S. S. as follows: para: 5.—

"The Chief Commissioner is of opinion, and I concur with him, that *wherever mistakes "have been made in recording cultivators as hereditary or non-hereditary the record should be carefully revised and amended"*:* and so, here there is both an order and a precedent for what we desire to do now, and the propriety is all the more apparent, that it is at such revision of settlements mistakes can the more efficiently be corrected.

* The words in italics are evidently an extract of a letter received from Chief Commissioner.

B.

The plan pursued of adjusting these relations is simple. Every landlord and tenant is confronted, and the exact custom is recorded, with the aid of a jury, appointed as representing both interests. It was approved by Chief Commissioner so for back as 1855, on the case of a reference made by Deputy Commissioner of Shahpoor. Mr. E. Thornton laid down instructions, regarding which the highest authority in this province remarked as follows : *.

" The Chief Commissioner considers that the preliminary method ex-" plained by Mr. Thornton of ascertaining which cultivators have, and which " have not, the right of occupancy and other privileges, is a good one ;" and, it is in the same letter the Punjab Government repudiated the idea, that hereditary cultivators can be created, simply when they *hold* 12 *years occupancy* ; for we find in para. 3 these words :—" The Chief Commissioner is not aware that " a period of 12 years has ever been authoritatively fixed or even generally " adopted" ; and again, " a Settlement Officer should be aware that it is the " nature, quite as much as the length of occupancy, which entitles a cultivator " to privileges ; but there is no rule on the point ; local customs varies" ; and " again, " Settlement Officers should be instructed to learn thoroughly the local " customs of their respective districts, and the opinion of the agriculturists."

This is exactly what we propose to do ; but we are told, that we have no power to do so. It is just this enquiry, we believe, it is our distinct duty to make, but we are informed the question cannot be re-opened except with the orders of Government.

This being the case, it is clear, and I come round to my original statement, we must stop the attestation I proposed to make. If there is to be no enquiry, there can be no attestation ; and if attestation is not to be completed we cannot enter upon the third and last stage of work, viz., the fairing of settlement records ;—and the result is complete stoppage of progress.

It is proper to place the matter in such a way before Government, that they may know how it stands with this department in two districts ; and as His Honor the Lieutenant Governor is now in camp in the Gobrdaspoor district, I take the opportunity to record these remarks, in the hope that, if there are any difficulties in the way, they be early removed.

Mr. Melvill's remarks are submitted in original, in case His Honor may like to peruse them.

CAMP TIBRIRA,
Dated 23rd *November* 1864.

(Sd.) EDWARD A. PRINSEP,
Settlement Commissioner.

* From Secretary to Chief Commissioner to Financial Commissioner, dated 11th December 1855. See Appendix No. VIII, part I, of Tenant-Right papers.

B.

Copy of letter No. 595, dated 16th September 1864, from Edward A. Prinsep, Esquire, Settlement Commissioner, Amritsur Division, to Commissioners of Amritsur and Jullundur Divisions.

1. I forward for your information and perusal 3 specimen printed statements and 5 rulings as marginally noted, showing how the relations existing between landlord and tenant (of that class recorded as hereditary cultivator at last settlement) are being enquired into and being brought to record in the revision of settlement in the Amritsur Division.

SETTLEMENT PAPERS.

No. 16, Ruling No. 1. No tenant can be exempted from payment of "rent" by order of court.
" 17, do. " 2 No shareholder in a common property has right to occupy as hereditary cultivator.
" 18, do. " 3. No Paheekasht tenant has right to occupy as hereditary contractor.
" 19, do. " 4. Non-residents have no right to a privileged occupancy.
" 20, do. " 5. No shareholder cultivating the land of another shareholder of the same estate can be considered hereditary cultivator.
" 21, Land-lord and tenant adjustment in Mouza Choranwalla.
" 22, do. do. in Mouza Kuler Mangut,
" 23, do. do. " " Sudhar.

2. The relations which exist, or ought to exist, between these two classes, are allowed to mutually adjust themselves, as in any other case of supply and demand, regulated by local usage.

3 Wherever the parties interested cannot agree among themselves as to the future status and terms of tenancy, the following chief issues are decided by award of Village punchayut, arranged so that the "committee of five" shall represent two members chosen from the land-lord and two from the recorded hereditary tenant interest.

I. Power of land-lord to evict.

II. Nature and terms of future tenancy.

III. Rent or rate of rent to be paid.

4. The enquiry is not carried out in an isolated way; but in one sitting. The whole village being present for the attestation of the other records, opportunity is taken to adjust these relations, a statement is prepared for each village, land-lord and tenant are confronted in open court, before the community and their reprsentatives. Where they come to terms, the relations fixed upon are recorded, where they refer to the punchayut the award of the latter is entered. There is scarcely any interference on the part of the judicial officers of the department, and no arbitrary rules are laid down. The local customs are recognized and reduced to record, and the verdict is tested by reference thereto.

5. The punchayut are not partial juries, and no one has it in his power to make arrangements with them for a partial decision, as it is a strict rule to select the members at random from the crowd at the time (not before) of the actual sitting for enquiring into their status. And the enquiry being in open court before the whole village, it may be allowed that certain guarantees are secured against wrongful awards.

6. The statements here enclosed, show the result of three villages where the enquiry was conducted either directly by himself or in my presence.

B.

7. It has been found necessary to learn the principal facts concerning the origin and aspect of ownership, so as to facilitate consideration of the case of each holder, whether he has any relation to the proprietary community or not; before just conclusions can be come to of the indisputable fact of a subordinate or concurrent position held by the tenants.

8. In this way it is next to impossible that there should be any wanton disturbance of rights really held or enjoyed. Tenants whose position, is proved to be of that class which are entitled to a privileged occupancy by the rules of revenue practice, must get a fair hearing, and if the position or rights attaching thereto have the sanction of local custom, or of revenue practice, which may have greater power than "custom," consideration can be given by the punchayat, and that measure of "protection" be awarded, which is sufficient and just in the interest of *both parties.*

9. Fixity of tenure, when once the enquiry is made, is as good as in any country. The exact nature and terms of tenancy are reduced to record in a way acknowledged to be satisfactory and just to both parties. The power of eviction, and under what circumstances is now elicited; while "rent" and the "rate of rent" adjusts itself under mutual agreement, as it always should do, and is not fixed arbitrarily by an officer of Government, who writes from a distance, or who perhaps has never been in the district, or portion of the district, where rent must be regulated by numerous causes known and felt only locally.

10. That there has been a deal of injustice caused by the blind introduction of that rule which gives a prescriptive occupancy *merely after a certain number of years without reference to the quality of the tenancy*, or the numerous circumstances which lead to its acquisition and continuance, can be proved to the satisfaction of any impartial person who would only do me the favor of being present, during the enquiry, as it proceeds, in any one village.

11. In the accompanying statements I have attempted to produce (3) pictures of the state of things as it at present exists in as many villages, confining myself simply to recording "facts" without intruding opinions—which might be declared to be foregone.

12. It will be seen that out of 59 holdings attested, 43, or more than one half, have been permanently conferred on tenants who are village servants, smiths, carpenters, potters, and even sweepers, who (many of them) admit themselves to be entirely subordinate ("Ahunsar" is the term always used) to the land-lord who gave them the land to cultivate; that they have no rights; that they are ready to give up whenever the land-lord chooses to evict them. Other lands are held by parties residing in neighbouring villages (Paheekasht) and do not profess to hold except at the will of the land-lord. Surely no one will deny that there was error in the last settlement procedure regarding tenants of this description.

13. Again, of the 16 who remain, 8 were declared to be "hereditary cultivators" by order of Court, at last settlement; and these are maintained by virtue of that order. But even here there is an anomaly, viz., they were to

B.

have privileged occupancy but to pay "no rent;" which position is contrary to custom as well as law. The other 8 are holders of "Tukeeas" and "Mosques" —places of worship and public resort in villages—who from time out of mind, have cultivated patches of land (some perhaps) held since the founding of the village. All these the Punchayut have declared to hold a privileged position, and so they are "protected" as in the case of an hereditary cultivator.

14. Thus, then what I wish to dwell on prominently are these conclusions, the fairness of which I think will be admitted:—

I. That the enquiries are being carefully conducted.

II. That existing and undoubted rights are being considered and upheld.

III. That glaring errors and misunderstandings of tenant rights are being rectified, in a way that has the mutual sanction of the parties interested and the support of local usage.

IV. That the relations which exist, or ought to exist, between land-lord and tenant, are being put on an intelligent basis, which gives all the fixity of tenure custom and justice demand.

V. That a great wrong previously done to the country in days when little was known of rights and tenures, and when no attempt was made to understand the position of land-lord and tenant, is being gradually remedied; with due consideration paid to all who enjoyed privileged occupancies before British rule, or on whom such occupancy was conferred by an act of this Government.

15. In the course of enquiries made, it has been discovered that at last Settlement the following parties were recorded as having "permanent" rights of occupancy. I mention them that you may consider whether the effect of last Settlement operations has not been of a very injurious and mischievous character—I quote from my Annual Report:—

Para. 30. Letter No. 547, dated 19th August 1864.

(1.) A Jageerdar in small plots of land recently reserved for fodder of cattle, in a village held in jageer.

(2.) Co-partners in a *common* holding.

(3.) Members of the same proprietary community, holding one of the other.

(4.) Tenants residing in other villages.

(5.) Village servants, artizans, and even sweepers, who rented land in lieu of rations, and under conditions of village service.

(2.) Servants acting for "absentee" masters.

(7.) Agents for recognized owners though the latter even resided in the village.

During the Sikh rule, in villages where the ownership was vested in the hands of a powerful ancestral brotherhood of the same stock and tribe, would any one of these holders of land, I ask, have been allowed to prefer claim to

a "permanent" occupancy such as has been conferred under the title of "hereditary cultivators" in the sense of the Settlement Directions. I go further —would any one of them have, even themselves entertained any claim at all against the will of their immediate land-lord. If not, then, because the status has been summarily recorded at last Settlement, can no concesssion be made, no enquiry be now allowed to remedy this state of things?

16. I trust I have made my views clear, by just parading these telling facts. I do so in the wish to bring the opinion of all officers of experience and knowledge of the country like yourself to a proper consideration of this important question. If anything is to be done, it should—in all justice—be done now. I address myself to you as I am led to believe that you entertain opinions, which have been expressed strongly on several occasions against the concession which many officers are now agreed on thinking should be made, to have a careful enquiry such as I am now endeavouring to make.

17. It has occurred to me, that it would be well to let you know the facts as they have come before us. I could show you many other papers bearing on this grave question; viz, the recorded opinion of 2 committees of native gentry and tenants held at Buttala and Amritsur; extracts from the reports of District Officers collected by Financial Commissioner; the opinions of Kardars of Sikh times, of selected native officials who have been long in employ in this province, and even the views of a gentleman like Raja Sahibdyal—who is now one of the Members of Supreme Council; all of which indicate the propriety of not letting this opportunity pass of enquiry during the present Revision of Settlement, and the majority of whom unhesitatingly declare that the question was not properly considered at last Settlement, and point to arrangements stereotyped by our system of Record quite contrary to equity, common sense and local custom.

18. It will afford me great satisfaction, if you will do me the favor of perusing carefully the enclosed papers, and give me an expression of your opinion as to the proceedings now going on in this Settlement; here placed under your consideration.

TENANT RULING.

That, of a tenant declared hereditary cultivator, and *yet permanently exempt from payment of rent*, order of court given at last settlement revoked, and re-trial on its merits enjoined. Referred by Settlement Commissioner in his No. 445, dated 24th September 1863, as follows:—

Goormookh (plaintiff) *versus* Nunda (defendant). *Claim*, for proprietorship of 20 ghomaos in mouza Sahowala, purgunnah Goordaspoor.

A case has just come before me, which is marginally cited, in which it appears that plaintiff, during last settlement, instituted a suit for half ownership of mouza Sahowala in the court of Kashee Ram, Tehseeldar (than in the capacity of a judicial officer in the Settlement department), who dismissed the claim. Appeal was made in the court of Pundit Motee Lall, who accepted the same; and, in his order dated 12th September 1852, directed that plaintiff should receive the permanent title of hereditary cultivator of his

occupancy, amounting to forty ghomaos, but should pay "malikana" (rent) to no one; and the reason recorded for this singular decision was, that it was proved, plaintiff was of the same ancestral stock as defendant, and had *never paid rent* to him in any shape before; therefore he was declared a tenant of this singular description.

2. Plaintiff now sues to be declared proprietor of the land in his occupancy.

3. As the decision given by Pundit Motee Lall is a ridiculous one, I request your permission to try the case now on its merits. Either plaintiff is proprietor of his occupancy or he is not. If he is, then he ought to have a decree to that effect; but, if he is not, then I object to record any tenant as tenant exempted from the payment of rent, as no such tenure is in existence.

This case is an example of the mistakes which have been made in last settlement in regard to the relationship of landlord and tenant.

Re-trial sanctioned by Financial Commissioner in his docket No. 4,543, dated 14th December, who replies—

That he agrees in thinking that to declare an hereditary cultivator permanently exempt from all demand of malikana is altogether anomalous; and, therefore, authorizes Settlement Commissioner to revise the decision of Extra Assistant Motee Lall, therein referred to.

TENANT RULING.

Referred to Financial Commissioner for re-trial by Settlement Commissioner in his No. 515, dated 7th December 1863.

Proceeding of Settlement Commissioner's Court, dated 7th November 1863.

Bagh, Keetoo, Dad, and others *Plaintiffs* (Landlords),

versus

Heera, *Defendant* (Tenant).

Claim, to have defendant converted from the position of a tenant "having hereditary right" of occupancy to that of tenancy-at-will in 19 gomaos, mouzah Rutta Jutol, tehseel Pusroor.

It appears, from enquiry made by Hur Gobind, Extra Assistant Commissioner, in a proceeding dated 12th October 1863, that both parties belong to the "*proprietary brother-hood*"; that the land is recorded in settlement misl as common to the puttee, in which both parties are co-partners; that defendant is also entered as hereditary cultivator. A pergunnah punchayut give their verdict that a shareholder merely cultivating a portion of a *common* property in which all are interested, can have no right of occupancy in preference, or to the prejudice of the remaining shareholders, so long as that holding shall remain

"common," and that no such right of occupancy was ever acknowledged or protected *against the will* of the remaining shareholders in former times, nor does local custom in any way permit of such a right.

It further appears that in an enquiry set on foot before the committee of influential persons at Amritsur, representing all interests, the committee were unanimously of the opinion that if a brotherhood proprietor during Sikh times happen to cultivate the land of a co-partner, held even in common, or in severalty, the tenancy was never considered to be other than that of a "tenancy-at-will," and that if any persons so situated have been recorded *hereditary cultivators*, it is against the sense of the country and all local usage.

This being the case, Extra Assistant Commissioner demands permission to investigate this claim *de novo* against the record, but hesitates because it is urged and proved by defendant that plaintiffs' claim was once made in District Court and thrown out; they appealed to the Commissioner, who upheld the entry in the settlement record, and rejected appeal.

It is clear from the case, plaintiff's plea is worthy of consideration; but, as the case has been heard once before in another court, and been upheld on appeal against plaintiff, now that the Settlement Court has been since opened, the court is of opinion claim should be heard, as Commissioner's order was merely given in support of the record, and not on the merits; while there is reason to fear that the entry is totally against all local usage.

Ordered, that permission of Financial Commissioner be applied for, for a re-trial of this case.

The re-trial sanctioned by Financial Commissioner in his docket No. 4,555, dated 22nd December 1863.

TENANT RULING.

That of twelve tenants recorded as having right of hereditary occupancy in sixty-three ghomaos in mouza Durkalee, pergunnah Pusroor, in Sealkote district, who *live in another village*, and are held to be "paheekasht," or mere tenants-at-will. Claim put in by landowners to reduce these tenants to former position as holding at will. Referred to Financial Commissioner for permission to re-try each case by Settlement Commissioner, in his No. 542, dated 19th December 1863."

In the case of sixty-three ghomaos of land situated in mouza Durkalee, purgunnah Pusroor, a reference is made by Extra Assistant Commissioner Hur Gobind on a claim put in at this settlement by

B.

Kureem Bux and others, Lumberdars, *Plaintiffs*,

versus

Gunga Ram, Bhaga, Jeewa, Eeda, Oomre, Kootub Shah, Noor Shah, Nuthoo, Mugur, Deena, Ram Ditta, Nutha, *defendants*, tenants residing in mouza Doogree, adjoining estate.

Question referred is this :—Defendants were recorded by order of court obtained at last settlement, dated 4th August 1855, *as tenants having right of hereditary occupancy*. Plaintiffs now wish to convert their tenancy into that of mere tenancy at will. It appears that out of fourteen tenants, all residing in Doogree, only two, *viz.*, Kootub Shah and Noor Shah were declared, after judicial enquiry, to be tenants deserving the privileged position. During attestation of the Khuteonee, because of the order, dated 4th August 1855, conferring the right on two tenants, all these tenants were recorded as "hereditary"; while there is strong reason for believing that many of them have been only four or five, one even one year in occupancy, reckoning from the last settlement. Extra Assistant Commissiner accordingly requests permission to take up the case of each tenant, and try each on its own merits, whether, according to the custom of the country and the principles to be pursued now in regard to such cases, these tenants can be declared as deserving of protection or not, in order that if no such cultivator rights can be proved deserving "protection," plaintiff may obtain decree to reduce them to mere *tenants-at-will*.

On first inspection of this case, I considered there was no necessity to take up such a claim at this settlement, as it appeared plaintiffs had appealed in the former order of the Settlement Court to the Commissioner, by whom their objection was heard, and the appeal rejected; and, as defendants had been recorded hereditary cultivators by an order of court, which had been upheld in appeal, I ruled that, until some definite orders were received from Government in regard to such cases, no interference could be allowed (order of this court, dated 22nd May 1863).

I. The Extra Assistant Commissioner has brought this case again before me, at Pusroor, to-day. There is strong reason for believing hardship has been sustained by the landlords from an individual order passed regarding two tenants, which was applied generally to all tenants who reside in Dogree, and thus the latter may have been recorded to be in possession of rights, which, according to local usages, as now ascertained, they never really enjoyed from even a long occupancy alone.

II. From enquiry instituted and recorded for future guidance, it has been established by sufficient testimony that tenants residing in other villages were universally styled "paheekasht," and that "pahee" tenants were entirely at *the will of the landlord, no matter how long the occupancy*. It is clear, then that these tenants, residing in an adjoining village, come under that class, and there is strong reason for believing they may have been decreed rights amounting to a "protected" occupancy in perpetuity, which have been unjustly acquired; so on this ground, I am of opinion, the application for a more careful enquiry at this settlement should be allowed.

B.

III. Further, from a statement filed and verified by putwaree, it is averred that many of defendants have been in tenancy even for such short terms as three, four, and even one year, before settlement ; and Extra Assistant Commissioner is led to believe that the order of 4th August 1855, given in favor only of two tenants, has been unnecessarily applied to all who reside in Dogree and cultivate in this village. On the above grounds, then, I have thought it proper to review my former order ; and, as I am informed at Pusroor all the good land of these plaintiffs has been thus locked up in the hands of defendants, while they themselves are forced to beg indifferent land from other landlords, which they can hold only as tenants-at-will, the hardship plaintiffs will be thus put to is such as to justify the special application here made.

The sanction of Financial Commissioner is accordingly solicited to a re-trial of this case, each tenant to prove his occupancy before a purgunnah punchayut, according to the system now pursued, and, according to the principles which have been ascertained to receive public support.

Vernacular proceedings accompany.

Reply of Financial Commissioner's docket No. 3, dated 4th January 1864, sanctions a renewed investigation and decision of the case.

TENANT RULING.

That of a tenant recorded at last settlement as having right of "hereditary occupancy" in four ghomaos, six kunals, and three murlas in mouza Eesa, purgunnah Pusroor, who now is proved to be (" paheekasht ") non-resident, having no right to remain except as " tenant-at-will." Case referred by Settlement Commissioner, in his No. 352, dated 4th May 1864.

In the case of land situated in mouza Eesa, purgunnah Pusroor.

Village attested in my presence. There is only one tenant recorded as having right of hereditary occupancy.

Alla Ditta, Doolo, and Jeeta, are the landlords,

versus

Humesha (Raien), tenant, resident of mouza Dogree.

Land held, four ghomaos, six kunals, and three murlahs, adjoining village.

This is a case not contested in court ; but tenant denies right of landlord to summarily evict him, while latter avers former is a *tenant at will*, having been in occupancy merely for some sixteen or seventeen years.

The landlord's statement is to this effect. That eighteen or nineteen years ago his village had a dispute with Dogree, where his tenant resides. They got back this land after a hard fight, and turned out tenant. Landlords cultivated for one year themselves, and then reinstated the old tenant after the land had been lying fallow for three years by reason of this dispute. Further,

to prove the tenancy-at-will, they took away four ghomaos, which was recorded at last settlement as "gair mouroosee," and to this no objection was raised

All this is admitted by tenant, who, however, pleads that he has really held the land from his grand-father, and that he was recorded as hereditary cultivator at last settlement, and he was permitted to pay *on fixed rates in cash* according to juma bach, with only one anna in the rupee for "malikana' (rent), altogether a privileged position.

Landlord and putwaree admit this tenant was recorded as hereditay cultivator at last settlement, and has paid in cash rates as then fixed ever since plus one anna in the rupee for *rent*.

Case is put to assessors* who come from three pergunnahs of Sealkote district, and were chosen by this court. They give thus ;—

* Buhawul Bux, Chowdree.
Afzul Chowdree.
Buddun Singh, Chowdree.
Gulam Mahomed, Chowdree.
Ahmudyar Chowdree.

VERDICT OF ASSESSORS.

I. AS TO POWER OF EVICTION.—Landlord can evict here whenever he chooses. Tenant *lives in another village*, is, according to custom of country, merely a "pahee" (otherwise called paheekasht). This class of tenants had no right or privileges in former days. Moreover, tenant admits past evictive powers, (1) when he allows landlords took the land away from him for one year, and then gave it back the next year, after the former had got back the laud in their dispute with the Dogree zemindars, (2) when he allows that landlords took away four gomaos, subsequently recording him as tenant-at-will for that land in settlement papers, notwithstanding that tenant states he had held this land, too, from the days of his grand-father.

II. RIGHT TO PAY IN CASH OR BY FIXED RATES.—Assessors are distinctly of opinion he has no right, as he never paid in this way during times anterior to British rule, when *kind* was always taken.

III. RENT TO BE PAID.—It is optional with landlord to demand "butai" payment; and if, as he says, it is the custom to demand half butai, then we consider this to contain "malikana" as well. The custom of the country is to consider rent charges consolidated in the half butai payment.

I concur in this decision. It is true that the tenant is a *raien*, and has been paying by fixed rates in cash during last settlement. It is further true that according to putwaree's shewing, from an entry in the old khusrah (field register) that this land was decreed to tenant as his hereditary occupancy by order of court at last settlement, but the terms of the order cannot be ascertained, as the misl was destroyed with other papers by mutineers, and neither of the parties have copy of the order. It appears the only reason for the order was that the tenant was a *raien*, and had been cultivating this land or some portion of it, when it formed part of the Dogree estate ; but seeing that it was recovered by the zemindars of Eesa after lying abandoned by reason of this

dispute, it cannot be said that tenant's occupancy was not disturbed, even if he did hold from his grand-father, which was very doubtful. However, the landlords twice exercised their power of eviction before, and that within a period of twelve years dating from last settlement, when they even took away the entire land from the tenant and gave it to him the next year on one occasion, and afterwards even took away four gomaos, regarding which tenant-consented to be recorded as "tenant-at-will" at last settlement. Since then he has been evicted from this without murmur, notwithstanding that it is admitted he had occupied it as long as the rest of the land recorded as "hereditary." It cannot be pleaded that he has made out a case of *privileged occupancy.* On the contrary, it is clearly put forward by assessors that they consider such tenancy as broken, and originating in the will of the landlord, so that the settlement entry must be altered.

Wherefore order is given in favor of landlord, for correction of record. Tenant will be recorded as "paheekasht," the term used to designate this class of tenants; but as former order of court is said to be the foundation of tenant's plea, and this decision is contrary to it, I consider it proper to refer to Financial Commissioner for cancelment of former order, if this decision is deemed proper and just.

Copy of a docket No. 1445, *dated 7th May* 1864, *from Financial Commissioner Punjab, to the Settlement Commissioner Amritsur Division.*

In reply to No. 352, dated 4th current, the enclosure of which is returned, sanctions correction of settlement entry in the case noted, the cultivator being paheekasht.

TENANT RULING.

That of several tenants recorded at last settlement as having right of "hereditary occupancy" in the two (2) properties Mehal Rungpoor and Lallpore—Purgunah and District of Sealkote; who are members of the same proprietary brotherhood. Held that they are either out and out proprietors,—or tenants merely occupying at the will of the landlord; and that one shareholder cultivating the land of another shareholder in the same estate cannot be recognized as having permanent rights in such a tenancy.

Case cited, and 3 other suits of a similar character in the same village referred to Financial Commissioner.

Proceedings in the Court of Settlement Commissioner, dated 7th July 1864.

Kadir Bux,
Bahadoor Khan. } *Plaintiffs*, Landlords,

Versus

Silabut Khan, (*Defendant*) Tenant.

Claim to cancel the position of "hereditary cultivator" recorded in favor of defendant, and to exchange their cultivation in defendant's land for this land, amounting to 1 gomao, 5 kurnals, and 6 murlas in Mehal Rungpoor Sealkote District.

B.

The parties are of the same ancestral stock and co-partners in the estate recorded as "Rungpoor" in the Registers of the district anterior to last Settlement, which estate was divided into (2) Mehals "Rungpoor" and "Lallpoor" at last settlement. Plaintiffs sued defendant for this land at last settlement, when the Judicial Officer seeing that defendant had been long in possession disallowed the claim to recover the land, but as the defendant also *owned* land occupied by plaintiffs, he decided, that the occupancy of neither should be disturbed; that plaintiffs' land should be recorded in their name and defendant be entered as "hereditary cultivator," and vice versâ; that defendant be recorded proprietor in some other land (not mentioned in these proceedings) of which plaintiffs should hold as "hereditary cultivator" also. Plaintiffs now sue for disturbance of the position of permanent occupancy (as a tenant) in either lands, they agreeing to give up to defendant, if latter will give up this land to them.

There are 3 other cases of this kind relating to the same estates, in which other parties, also belonging to the proprietary body, bring similar suits. Plaintiffs' land, now sued for, is in Mehal Rungpoor;—Defendants' is Lallpoor.

The Extra Assistant Commissioner submits these cases for confirmation of his decision, which is this;—that as defendant's position of tenancy is very old, that he has further sunk wells, made a garden, and improved the land, it would not be fair to disturb him, but that both parties should continue to be recorded as "hereditary cultivators," and that, when death of defendant shall open up the question who is to succeed to the occupancy, plaintiffs may then have the option given to them to recover, provided they pay up full compensation for capital laid out during lifetime of defendant.

The opinions of Assessors and Superintendant differ from this: they consider that the occupancy of both should be upheld in the land held respectively by them, and both be recognized not as tenants but as landlords. In other words, the land here claimed should be converted into defendant's *proprietary occupancy*,—that held by plaintiffs, though recorded in defendant's name, as plaintiff's proprietary occupancy.

This case appears to me quite clear. It is not one that belongs to the question of "tenancy." The parties are co-partners of the same ancestral brotherhood. The first issue is, did they hold *in "common" or always separately* previous to last settlement; for I perceive some of the evidence goes to show that at last settlement there *was a division* of the lands belonging to the parties. If the land was "*common,*" *then* the Extra Assistant Commissioner at last settlement had no right, according either to local custom, or to the practice of Revenue Courts, to consider the occupancy of either in any way a bar to plaintiffs' obtaining an equal share of good and bad land. If defendant's plea then was the same as now urged, then the Court should have ordered plaintiffs to pay a share of losses incurred by such individual outlay of capital. In a "common estate," occupancy counts for nothing; though all reasonable objections must be heard and adjusted, and division should not be allowed until compensation had been paid.

But I am very doubtful of this estate being held in *common* previous to settlement; for it appears plaintiffs tried to recover this land during the incumbency of Dewan Sing Kardar 15 years ago. Owing to defendant's very

B.

ancient and exclusive occupancy, this land was not touched, but he and others gave 15 gomaos from Lallpoor estate as an equivalent, which plaintiffs evidently took and have held ever since. An exchange then being given and taken, plaintiff's claim should have been thrown out at last settlement; that is to say, assuming, as I am now doing, that defendant was not disturbed by the Kardar (1) in consequence of *his long occupancy* and (2) the land not being then a "common estate;" it was clear the land then and now claimed had *passed over in absolute ownership to defendant*; and the 12 years having elapsed, plaintiffs' right to it could not have been admitted. Further, as they *had* taken an exchange in the Lallpoor estate, there was an end of the matter. Hur Gobind, E. A. Commissioner, wants now to uphold former arrangement of Court, and make a compromise, for which I see no reason whatever. The whole confusion has been caused by the right of "hereditary occupancy" being given at last settlement. Being members of the brotherhood, they held a mere permissive occupancy, if the *property was "common;"* and a member of a proprietary community cultivating land held "in common" is debarred from all right to cultivate to the prejudice, or in preference of the remaining shareholders. This point has been ruled in another case, submitted in Settlement Commissioner's No. 515, dated 7th December, 1863, which was sanctioned by Financial Commissioner in his Docket No. 4655 so far, that a re-trial in that case was allowed.

On the other hand, if I am to assume that defendant did *not* hold in common with plaintiff, but *had acquired an absolute title in severalty*, then it is clear defendant should have been declared "proprietor" of *this* land, and plaintiffs proprietors of the other land, received in exchange, at last settlement. The assessors and Superintendent take this view, which I consider to be the proper one, but if I pass decision to this effect now, it will be against the terms of an order of Court passed at last settlement.

I order, accordingly, that this proceeding and vernacular file be submitted to Financial Commissioner for permission to revise the former order making both parties "hereditary cultivator" in the land held respectively by each, the ownership of which is recorded contrary to the state of occupancy; and to give option to both parties to amend their claims to that of ownership. If on a renewed enquiry it be discovered from the former and present records, that defendant's possession, as that of a proprietor, extends over a period of 12 years, counting from the year in which plaintiffs brought their suit; then their claim must now be thrown out, defendant be decreed to be absolute owner, and the entry in settlement papers of plaintiff's ownership be corrected to that of defendant.

It is repeated here, that there are 3 other cases of a similar character regarding land, in same 2 Mehals where the disputants are members of the proprietary brotherhood; and if Financial Commissioner is pleased to give the permission applied for, it is expected that sanction will extend to the other 3 cases, so as to allow of their re-trial also, on the basis of ownership and not of tenancy.

Reply of Financial Commissioner, No. 2499, dated 23rd July 1864.

Sanctions revision of order in the case cited,—also in the other cases referred to. Financial Commissioner quite concurs in the opinion, that as a general rule, a *share-holder cultivating the lands of another share-holder of the same estate cannot be considered an hereditary cultivator.*

B.

LAND-LORD AND TENANT STATEMENT.

No. 263.

MOUZAH CHORANWALLA.

PERGUNNA BUTTALA.

DISTRICT GOORDASPORE.

General Character af village.—This estate was formerly the property of Soojanund, Khuttree, and known after his name. The Khuttree located the present proprietors, but lost all hold on the village at commencement of Sikh rule. It is now called "Choranwalla," from the Deogun Brahmins, who held the property as jageer during Sikh rule, building a fort and defying the country by open brigandage. They are even now thievishly disposed.

Thus each former occupant became proprietor of his occupancy, and built wells. Within each well the land is divided in shares called '*Lurees*,' and these *Lurees* became the measure of right.

Owing to separate castes, there have always been four Turufs—

(1.) Uthowal, without Puttees.
(2.) Sidhoo, ditto ditto.
(3.) Deogun, ditto ditto.
(4.) Lukanpal, with 2 Puttees.

The Deogun Jagheerdar collected formerly by kunkoot, plus 10 seers in every maund for "kurch" and zubttee, at rates per kunal. From cultivators, "rent" was taken at 2 seers per maund as *butai*, and at 5 per cent as *on zubtee* produce.

The estate is of the Putteedaree kind, customary shares being the measure of right.

Attested by.

SEIB DYAL, *Superintendent*,
Under GOPAL DASS, *Extra Assistant Commissioner.*

E. A. PRINSEP,
Settlement Commissioner.

...ttested Statement of Land-lord and Tenant recorded at last Settlement, to be Hereditary Cultivator, ...

Pergunnah Buttala, District of Goordaspoor.

Name of Proprietor.	Description of Tenant.	Number of Khuteonee.	Name of cultivator.	Extent of land under cultivation.			Statement of Tenant.	Statement of Land-lord.	Verdict of Assessors.	Order of Attesting Officer.
				G.	K.	M.				
...bah, son of Chunta, Jut, Uthwal,	Cultivators live in village	1	Kumma, son of Vullee, Raeen.	17	3	3	Has held for 28 years unbroken. Land-lord cannot evict, as he has cleared the land and planted trees. Pays revenue at jumma rates plus 5 per cent "rent," will pay at same rates, plus 1 anna per rupee for rent. Is distinguished as "Asamee."	Has cultivated only 13 years. He resided at Pukhohee, and cultivated lands of "Boorj." Land-lord brought him from there, and located him here only 1 year previous to last Settlement. He was erroneously recorded as having right of occupancy at last Settlement. Can oust tenant for this reason, that he has acquired no rights within this short time. Has taken at cash rates hitherto, but in future wishes to take land into his personal cultivation. He is my "Asamee."	All evidence taken from the people of this village satisfies us that tenant has only held from a period of 4 years anterior to last Settlement. Land-lord, too, brought him from another village lately, so he can have no right. Land-lord can evict such a tenant; he himself is obliged to go as a tenant to other villages, being in want of land. It is very hard, and contrary to custom, to confer right of occupancy to tenant to prejudice of such a land-lord. So we decide that tenant give up ⅓ at once, and the remaining ⅔ to continue with tenant for 3 years as indulgence because he has manured the land and paid in cash. He should pay at jumma rates plus 10 per cent "rent." After 3 years, land-lord can evict him of the remaining ⅔ but tenant can clear away any trees planted by himself. Land-lord has no title to these trees. This tenant is described by us as "*Asamee*"	Extra Assistant Commissioner attested this, and considers the arrangement fair and reasonable.
Sham Sing, Bhan Sing and Meea Sing, sons of Soobah Sing, Brahmin, (Deogun,)	Do.	4	Atma and Doosondee sons of Saeen Ditta, Brahmin. REMARKS BY SETTLEMENT COMMISSIONER. On further enquiry, it is discovered that this Tenant has lost constructive occupancy for the last 8 years, and the reason why Land-lord allowed him to collect in Butai from Choohur, is that the latter being recorded Hereditary Cultivator, it was thought Land-lord had no power to make mutations during that Settlement.—E. A. P.	7	6	2	Has held for 200 years without interference for three generations, planted trees, borne losses up to 60 rupees even. For the last 8 years I have tilled this through Choohur (carpenter,) but do not cultivate actually myself now. I always did so before. Choohur pays me by butai, and I pay at cash rates same as any proprietor without rent. Will pay in cash rates as before, but declines to pay "rent" Yes, I am an "Asamee."	Has held only 13 years. I can evict him, he has never improved the land, nor planted trees. Formerly he certainly did cultivate, but Choohur does it now, from whom he takes by butai and gives to me at jumma rates plus 5 per cent as rent. He is my Asamee, and has no right to hereditary occupancy.	Tenant is a Brahmin, does not cultivate himself, but one Choohur does so for him; though he pays the revenue. Tenant is *not* in possession and cannot claim right to protection. When his wife died 8 years ago, he voluntarily threw up cultivating; villagers present confirm this. This being the case, we can see no cause for right. Land-lord can evict "Choohur" carpenter, but they can give him a puttah, with the terms on which they agree to let him hold in future. He has not planted trees, nor borne losses, and giving up 8 years ago, shews he has disconnected himself with the tenancy.	Extra Assistant Commissioner concurs.
Ditto, ditto,	Do.	12	Amreeka, &c., sons of Rooldoo, Barber.	0	1	2	Has held since village was founded. Grand-father of land-lord gave this as "Mafee." At Settlement it was resumed. Land-lord cannot evict me, because of the Mafee tenure. During grain days held this Mafee, but now as the land was continued, cannot be made to give up. Has paid at jumma rates without rent. Will pay at same rates, but declines to pay rent. "Asamee."	Tenant does not cultivate himself, but through others. He had the Mafee, and hence his conection with the land. I can evict him now that the original condition, viz., of "Mafee" has been abandoned. He enjoyed a grant from my grand-father, but is not a tenant. Has paid at jumma rates plus 5 per cent rent. He may remain as Asamee, but must give up whenever required by me.	This is not a tenant case, but a Mafee tenure, and on this account he has held when it was resumed, and at last Settlement he was recorded hereditary cultivator. He has no claim to protection against will of land-lord, who can evict. He should be recorded merely as "tenant at will." As there is Cotton he should pay at 8 annas per kunal, plus 1 anna rent. After he has cut Cotton crop, land-lord can take away if he choose, as he is a "Kumeen."	Extra Assistant Commissioner concurs.

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Bhan Sing, Sham Sing and Meea Sing, sons of Soobah Sing, Brahmin, (Deogun.)	Do.	7	Amreeka, Dooloo, Jummeeta and Nanuk, sons of Mutsuddee, Jut.	9	2	12	Has held for 200 years, cannot be evicted. Has not improved the land, nor reclaimed it, but has planted trees. Has paid at jumma rates, without rent; will pay the same way in future. Claims to be recorded, as land-owner, and has given petition into Court.	Has held only 20 years. 4 years before Settlement took away the land and gave it to Bhuugee, who held for 2 years, and coming back 2 years before Settlement, he was allowed to hold on again when he was recorded at last Settlement as hereditary cultivator. I have evicted him before, and can do so again. He has paid at Jumma rates plus 5 per cent "rent." He is my "Asamee," but I want now to cultivate myself.	As there is a claim for proprietorship and case is in Court, no verdict is required at our hands.	Cases in Court, and will be decided after regular inquiry.
Ditto, Ditto,	Do.	9	Allee Bux, son of Rooldoo; Jewun, son of Choor, Khoomhar.	0	1	4	Has held for 25 years as Mafeedar, but being resumed at Settlement, holding continued with me, but entirely with consent of land-lord who can evict me whenever he pleases. I have no claim. I pay at jumma rates, without rent. Will pay in future as before, but "no rent." Others cultivated this for me, and I am an "Asamee."	15 years occupancy, and was erroneously recorded as hereditary cultivator at last Settlement. Certainly I can evict. He has paid at cash rates, but I want the land.	This was originally held and granted as Mafee tenure, not given on a tenant lease. Such a person is entirely subordinate to land-lord, and so he should remain as "tenant at will." He is not even "Sepee" (village servant,) and agrees to give up. He does not even cultivate himself.	Extra Assistant Commissioner concurs.
Dya Sing, Khooshal Sing and Dyal Sing, sons of Soobah Sing; Kaloo and Chunda Sing, sons of Dooltoo; Jowahir Sing and Jowalla, sons of Sobah Sing, Jut, Sidhoo.	Do.	10	Kumma, son of Vullee, Raeen.	1	5	12	Has held for 28 years uninterruptedly, cannot be evicted, for he has cleared the land, planted trees. Has paid at cash rates, and will pay at same rates in future, plus 1 anna per rupee for "rent charge." I am an *Asamee*.	Has held for 13 years only, and entirely with my consent. I can turn him out, he has no claim or right whatever. He is my "Asamee," and now I want the land for my personal cultivation.	This tenant is known as "*Asamee*" but has cultivated on same terms as in No. 1. He is the same person. He has no claim, but can hold *on* for 1 year, when land-lord can evict him if he wishes. For this period tenant will pay at jumma rates, plus 10 per cent for "rent." As regards cutting trees same as No. 1.	Extra Assistant Commissioner concurs.
Dya Sing, Khooshal Sing and Nehal Sing, sons of Soobah Sing, Jut, Sidhoo.	Do.	12	Mehtaba and Dewana, sons of Luchha, Jut.	15	0	12	Has held for 50 years uninterruptedly, cannot be evicted, for he has restored an old well, planted numerous trees. Landlord never interefered, always paid at jumma rates with rent. Will pay at the same rates, but NO rent.	14 year's occupancy, erroneously entered as hereditary cultivator. Can evict him. He only held 2 or 3 years before Settlement. Never made the wells nor sunk the trees, ¼ of the well is held by me, and I want the land. He has no claim. I want the land from my "*Asamee*."	He is not an "Asamee," having been brought from another village and held for 30 years. May have set the well a going, but in this period has enjoyed profits to recover this. Landlord wants for his *personal* cultivation, and he cannot object to give up. Proposes ½ should be given up after 1 year, and the other ½ after 10 years; for 5 years may pay at Jumma rates, plus 10 per cent "rent," afterwards at rates mutually to be fixed.	Extra Assistant Commissioner concurs.
Mehtab Sing and Lehna, sons of Ram Sing, Brahmin, (Lukhunpall.)	Do.	13	Amreeka, son of Rooldoo, Hujam.	2	1	19	Same as No. 3, from founding of village, but not as Mafee as in that tenancy; in other respects the same. Will pay at cash rates, but has never paid "rent," and declines to pay in future. Is "Asamee."	Has held only 12 or 14 years, entered erroneously, can evict him, does not cultivate himself but through others. He has no claim. Formerly during Jageer, when "Butai" prevailed, used to take 2 seers in the maund as rent. At Settlement Jageer was resumed, when he paid at Jumma rates plus 5 per cent. He is my Asamee, and I want the land now myself.	This is a "Kumeen" though not of this landlord, he does not cultivate himself, but through others, according to custom he should remain tenant at will.	Extra Assistant Commissioner concurs.
Ditto,	Do.	14	Buggur, son of Rooldoo, Hujam.	2	2	0	Has held from founding of village, cannot be evicted. Paid by "butai" during Jageer. Since resumption paid at jumma rates, never any rent, and will pay same in future without *rent*. Is "Asamee."	Has held only 13 or 14 years, can evict him. He does not cultivate himself, but through others. Took 2 seers per maund before as rent. I want now to cultivate myself.	Same as preceding No. 8.	Extra Assistant Commissioner concurs.
Ditto,	Do.	15	Jewun, son of Dyallah, Jut.	19	1	10	Ever since founding of village. Cannot be evicted. Claims ownership. Was erroneously recorded hereditary cultivator at last Settlement. Has always borne liabilities and losses same as any proprietor. Brother has given in petition.	Has held only 15 or 16 years, but never one well, sometimes at one well sometimes at another. Can evict him. Has done nothing to give claim. He cultivated through others. Always took 2 seers per maund during jageer. I want this land for myself.	Has put in a claim in Court, so declines to give opinion.	Case in Court.

Attested before me this day of in open Court at Battala, in presence of whole community, and before Sahib Dyal, Superintendent, with the aid of Assessors, and signed by Lumberdars, Putwarie, and same Assessors.

(*Signed*), ACHUR SING, *of Bhaw*, (*Hereditary Cultivator*); BHAN SING, *of Tinda Roree*; (*Proprietor*); IMAM BUX, *of Buddowal*, (*Hereditary Cultivator*); NEHAL SING, *of Ghoomun*, (*Proprietor*); MOTEE, *of Bher*, (*Proprietor*).

Further signed by DYA SING AND BHAN SING, *Lumberdars*. SAWA *Putwarie*.

LALLA GOPAL DASS, *Extra Assistant Commissioner*.

B.

LAND-LORD AND TENANT STATEMENTS.

No. 42.

MOUZAH KULAR, MANGUT.

PERGUNNAH AMRITSUR.

DISRICT AMRITSUR.

General Character of Village.—This estate was founded 10 generations ago by one Kuzana, of the *Kuler* tribe, who came from *Malwa*, and gave the name after the caste. It is divided into 2 puttees in the "Kuler" side, ancestral shares having given way to *customary* shares, which are the measure of right.

About 250 years ago, one Ladkhan, a Rajpoot of Chamearee, bought some land of the village of Dadeean and located one Doolchee of the "*Mangut*" tribe, hence the people of the two properties have lived together, and become one estate, which is called "Kuler-Mangut" by the names of their respective castes. Their properties however lie separately as *Chuk-but.*

About 150 years ago, the village was devastated, and for 27 years remained deserted. The Mangut people returned, and with them the descendants of Ramoo of the Kuler community. They founded a new village site, in which they now live, but traces of the old "Theh" still exist on the spot.

The village, is Khalsah. In turuf Mangut some Turcans have bought up the share of Kurma (Mangut,) who died without issue, so they are recognized as of the proprietary community. In the same way, a family of the Sumrah caste are recorded proprietors, being the descendants of the daughter of Dargahee (Mangut) who *gave them their land.* The tenure is Putteedaree with respect to Turuf Kuler, and Bhyachara as regards Turuf Mangut; each family regulates its right by possession in the latter.

EDWARD A. PRINSEP,

Settlement Commissioner, Amritsur.

[A]ttested Statement of Landlord and Tenant recorded at last Settlement as "Hereditary" Cultivator, in Mehal Kuler-Mangut, Pergunah Amritsur, District of Amritsur.

[N]ame of Landlord.	Description of Tenant.	Number of Khuteonee.	Name of Tenant.	Area of his occupancy.	Period of Occupancy entered in Khusreh.	Statement of Tenant.	Statement of Landlord.	Verdict of Assessors.	Order of Attesting Officer
				G. K. M.					
Dayah Sing, son [o]f Sahib Sing, Jut, [M]angut.	Resident of village.	63	Gounsah, son of Soudagur, Lahore.	3 5 11	At time of settlement he was recorded as mouroosee.	Has cultivated for 3 generations without interference from landowner. He has never taken away any fields, but if he wants land for his own purposes he can evict me. We are on good terms. Always paid in grain until settlement, since when I pay at same rates as proprietor and 4 annas p. chahhaee, (¼) of well, as "rent."	Has held for 75 years. I gave him the land and have kept him on; he is always subordinate to my orders. I have never taken fields from him nor exchanged them, but when I want for myself have the power to evict. He holds completely at will. Has no objection to tenant paying at fixed rates in cash hereafter, but agrees to 5 p. c. malikhana, tenant agreeing to pay "mulba" as well. I will give a putta now, and if I evict, will give 2 years notice to quit.	I. Tenant is a "Sepee" (village servant) being Blacksmith, and this is why he has held so long under the will of landlord. Tenant admits landlords right to evict for personal cultivation. Undoubtedly he has power to evict, but as he has held for 70 years and paid latterly in cash we consider he should be "protected only so far that landlord give him 5 years putta new and if he wishes to evict afterwards 2 years previous notice must be given. II. Tenant to pay in cash rates, plus 5 p. c. malikhana as agreed to mutually.	
Kurruk Sing, son of Doonah, Teg Sing, Meg Sing, Tega Sing, sons of Shumere Sing, Jut.	Do.	63	Do. Do.	9 7 5	Do. Do.	Same as No. 1.	Same as No. 1.	Same as No. 1; was one holding, has lately been divided, hence it appears in to place.	
[D]yah Sing, son of [S]ahib Sing, Jut, Mungut.	Do.	59	Bussawa Sing, son of Bhaga, Carpenter.	7 2 12	Do. Do.	Has held for 40 years, is village carpenter. Jooma his brother does carpenter's work for landlord; has no claims, but agrees to give up whenever landlord wishes to eject him. Will pay @ jumma rates in cash, plus 5 p. c. "malikhana."	This is my tenant-at-will: is a "Pahee" and "Sepee." He has no right and agree to take cash rates, plus 5 p. c. malikana.	This is a mere tenant-at-wll: he admits it, being village servant, so we have no further opinion to give.	Confirmed b[y] Putwaree.
Do. Do.	Do.	59	Bussawa Sing Kashtkar, Surroop Sing, son of Bhaga managing for Bussawa Sing,	6 2 16	Do. Do.	Same as No. 3; is partner (baheewal) in Bussawa Singh's tenancy, having held from him and with his liberty.	He is merely a "Baheewal," of Bussawa Sing, (No. 3); has no claim, cannot be recognized except by No. 3.	Tenant having admitted landlord's power of eviction above (No. 3) this his partner has no claim.	

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Boodoob, Sunta Sing, Komali son of Dewan Sing; Chait Sing, Jymeeut Sing, Jeewun Sing, sons of Ramja, Jut.	Do.	56	Ghonslah, son of Soudagur, Lohar.	3	6	12	Do.	Do.	Has held only 15 or 16 years, and readily agrees to give up whenever landlord requires.	Has held only 15 or 16 years; I now want the land; tenant is merely cultivating with my pleasure, and agrees to give up.	None required; tenant is a mere tenant-at-will.	
Futteh Sing, son of Goolabah, Jut.	Do.	30	Jowahir Sing son of Boor Sing, Carpenter.	12	0	14	Do.	Do.	Same as in No. 3.	Same as in No. 3.	Same as in No. 3, must be recorded as mere tenant-at-will.	
Bootah, son of Churat Sing, Jut.	Do.	20	Nehal Sing, son of Bhurdan Sing, Jut.	19	5	5	Do.	Do.	...	Tenant has since died, and very lately the land has come into my hands	...	Must be at tested at tim of khewut whe ther Neh Sing is reall dead or not.
Dhurmah, son of Goolabah, Jut.	Do.	24	Puna son of Bhaga, Choora.	15	4	7	Do.	Do.	Has held only 16 years. Landlord can turn him out. Agrees to give up whenever required; will give at cash rates if landlord wishes it, plus 5 p. c., in future.	Has held only 16 years; is tenant under his will; so long as he is allowed to cultivate or continues to cultivate he must pay at jumma rates in cash, plus 5 p. c, malikhana.	Tenant himself admits only 16 years occupancy and complete subjection to landlord. He has no right and is therefore mere tenant-at-will	

Attested before me this 5th day of May 1864, in open Court at Amritsur, with the aid of marginal assessors; and signed by Lumberdars (headmen,) Putwaree, and same assessors.

(*Signed by Assessors*)

A (Signed): WAZEER SING, DYA SING, FUTTEH SING, — *Lumberdars.*
GOORMUKH—*Putwaree.*

ESUR SING, GOLAM NUBEE, JWALA SING, — *Proprietors.*
RAM SING, *Lumberdar of Rusoolpore,* WAZEER SING, *Resident of Mudanke,* — HEREDITARY CULTIVATORS.

E. A. COMMR. AGHA KALABABID, *and Lieutenant* HUDLESTON, *A. S. Commr.,* — *Being present.*

EDWARD A. PRINSEP,

LAND-LORD AND TENANT STATEMENT.

No. 50.

MOUZAH SADHAR.

PERGUNNA AMRITSUR.

DISTRICT AMRITSUR.

General Character of Village.—This estate is 500 years old, was founded during Emperor Baber's reign. Belongs entirely to one tribe of Bhutee Rajpoots, a large and strong community, called Sadhar after the name of one of the sons of the first founder. There are no other castes recorded as proprietors.

It was originally divided into 2 "Turufs," but not equally; ancestral shares have given way under anarchy and constant changes. One Hyat Khan, too, bought 200 ghomaos, about 300 years ago, from Kuler Kulan, alias Doboorjee, a neighbouring village, which land has got intermixed, disturbing the old ancestral status. In Turuf Allee Khan all trace of shares is lost, possession has become the measure of right; but in Turuf Husnee Khan, *customary shares* prevail and are recognized as the basis of all right.

Kyasoo Khan, one of Sadhar's sons, had a title in the estate, but frequently left the village. Wuzeera Khan, his representative in the present generation, brought dispute at last settlement and obtained decree for 113 ghomaos, which was formed into a 3rd "Turuf."

I. Village has been Jageer for 60 years, and is still so; belongs to Akal Boonga temple. It is of the Bhyachara-Putteedaree tenure.

EDWARD A. PRINSEP,

Settlement Commissioner, Amritsur.

ed Statement of Landlord and Tenant recorded at last Settlement to be Hereditary Cultivators,

Pergunnah Amritsur, District of Amritsur.

f Landlord.	Description of Tenant.	No. of Khuteonee.	Name of Tenant.	Area of his occupancy.	Period of occupancy if enterred in Khusrah.	Statement of Tenant.	Statement of Landlord.	Verdict of Assessors.	Order of Attesting Officer.
Bulund, sons of Rookhna, sons otba, Rajpoot . f Akhbur ½, the Kootba. ½	Resident of village.	8	Must. Bhurree, wife of Boodeh Shah, Nehal Shah, follower of Boodeh Shah, (Fakeer.)	G. K. M. 4-5-11	Was recorded hereditary cultivator at last Settlement, period of occupancy not stated.	Has held 100 years; built a "Takeea," made a well near Tukeea, no one has power to evict. Has paid always in cash and will pay so in future. Agrees to pay at juma rates in cash. plus 20 per "malikana" rent.	Has only taken this land the last 15 years, he is a Fakeer at the "Takeea," whom it is in my power to evict. Certainly he has built the Takeea and well, so may remain but must pay in cash plus 20 per cent. rent.	(I.) All here present admit the landowner's statement is not correct. This is a very old tenant, Fakeer of a Takeea. A fair is held at this well. There is no proof of landlord ever having exercised right of eviction by taking away any of the fields. The land has only come to landowner the last 15 years by division of property, hence why he states 15 years occupancy. (II.) Landlord cannot evict here. Tenant must be "completely protected." He should pay in cash at fixed rates plus 20 per cent. "rent," in addition to "mulba" (village expense).	Confirmed.
h, Allah Deeah, ix, sons of Meea Kasim, Ameer, , sons of Ghoo- Khan Rajpoot, . Sons of Meea sons of Goomeh share.	Do.	11	Do. ditto.	3-4-7	Ditto.	Same as No. 1.	Same as No. 1.	Ditto. ditto.	Ditto.
oo, Hajee, Ga- s of Maleh Khan , Bhuttee.	Do.	37	Foujah, son of Iza Shah, Rajpoot.	8-7-14	Ditto.	Has held for 40 years, but admits he is a co-partner in the village of same caste as landlord. And agrees to give up to him	He is of the same brother-hood with me, and obtained the land from me, and holds it completely at my will. I can turn him	Tenant himself admits he holds at the will of landlord. He is one of the brotherhood, so has no claim to be protected. He is tenant at	Ditto.

						whenever he requries, and will pay in cash plus 20 per cent " rent." (N. B.) At first he stated he claimed ownershsip; afterwards withdrew and admitted in my presence and quite voluntarily that he had no claim and would give up]	out whenever I like, but as long as he pays in cash rates plus 20 per cent. " rent" he can continue to hold on.	will and should be recorded as such.	
or Khan, son of h Khan (Hazir), az son of Peera Hazir) Rajpoot.	Do.	40	Peera, son of Buhadoor (Tehlee.)	3-3-18	Ditto.	Has held for 30 years, quite at the will of landlord, and agrees to give up whenever called upon to do so.—Will pay @ cash *rates* plus 15 per cent " rent" as fixed by Assessors.	Has held 25 years only quite at my will, I can evict him at pleasure.—Agrees to his paying @ cash rates provided he gives 15 per cent. rent, as fixed by Assessors.	Tenant himself admits he is tenant at will, and should be recorded as such, being a village oilman, of the "Sepee" class.	Ditto.
or Khan, son of eh Khan, (hazir) az, son of Peera azir), Rajpoot, ee. r Khan ½ share, az ½.	Ditto.	41	Sundeah, son of Goorah, Sweeper.	G. K. M. 1 2 10	Ditto.	Same as No. 19.	Same as No. 19.	Same as No. 19.	Admitted by tenant. Confirmed.
ldah, Imam Bux, f Allah Deeah,—o, Jamoo, sons of b Khan; Fouja, son va; Shurfoo, son of ur, Rajpoot, Butirhazir. eer Khan, son of Bux; Foujah, son noond Khan; Gaon of Shadee Khan, r, Rajpoot, Buttee. Dea, ½ share. f Shahab, Shurfoo, n, } ½ share. n, 1 share. o Khan, o Khan, } 1 share	Ditto.	70	Ameer, son of Peer Bux, Rajpoot.	3 3 9 Cultivated, 3 2 4 Uncultivated, 0 1 5 3 3 9	Ditto.	Claims ownership, being one of the co-sharers in the holding of an absentee, and does not profess to have any right to the cultivation in a common holding superior to his co-partners.	Admits that Ameer Khan is his co-partner, and as such the holding being that of absentees agrees to his being recorded merely as owner as in proprietary Col.	(Not asked.)	This tenant column will in future be filled up with the word "khood kasht," to apply to all the co-partners and not to one of them.
Ditto.	Ditto.	72	Sundeah, son of Goorah, Sweeper.	0 2 8	Ditto.	(Same as in No. 19, but prefers to pay @ cash rates plus 15 per cent. "rent."	(Same as in No. 19), if he agrees to pay at cash rates he may do so provided he pays 15 per cent rent.	(Same as in No. 19,) should be recorded as tenant at will, as he is a village sweeper. Such man never	Confirmed.

of Land-lord.	Description of Tenant.	No. of Khuteonee.	Name of Tenant.	Area of his occupancy.	G.	K.	M.	Period of occupancy if entered in Khusrah.	Statement of Tenant.	Statement of Land-lord.	Verdict of Assessors.	Order of Attesting Officer.
, Imam Bux, &c., , (as in No. 6.)	Residing in Kullair Goman	71	Shumshere Sing son of Deevanah, Jut.	 Cultivat d, Uncultivated,	4 3 0 4	0 2 2 0	6 6 0 6	Was recorded hereditary cultivator at last Settlement, period of occupancy not stated.	Has held from his grand father, but admits at the will of land-owner. Agrees to pay at cash rates plus 20 per cent. " rent."	This is a "paheekast," lives in another village, quite a tenant at will. He can be turned out when I chose. I have brougt suit for " rent ;" and he agrees to pay at cash rates plus 20 per cent. for rent, which I accept.	Tenant belongs to another village; can have no right, and admits he is tenant at will; land-owner certainly can evict him.	The real tenant is not present. Supdt. will make further enquiries.
Ditto.	Ditto.	71	Shumshere Sing, son of Deevanah, through Wuzeera Sing, his brother, (Jut).	 Cultivated, Uncultivated,	5 5 0 5	4 3 0 4	9 18 11 9	Ditto.	I live in another village and am "paheekasht," landlord can evict me whenever he pleases. I will pay at cash rates plus 20 per cent. malikana as demanded.	Tenant has no claims as he lives in an other village. I can evict him, but he may continue take on from year to year at cash rates plus 20 per cent for rent,	This is a " Paheekasht," and tenant agrees to give up whenever required to do so; and they have mutually settled as to rent and payment.	(Same as No. 8)Supdt. will make enquiries.
Ditto.	Ditto.	71 &75	Shumshere Sing, son of Deevanah, through Lall Sing his nephew, (Jut.)		4	0	o	Ditto.	I am partner in the tenancy of Shumshere Singh.	Has no claims being partner of No. 9; besides his name is not entered in the reccord. It is a private transaction.	Same as No. 9—can cultivate as tenant at will, but on no other terms.	Confirmed.
Ditto.	Ditto.	73	Goolab Sing, son of Mohur Sing, Jut.		1	0	13	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
Ditto.	Ditto.	73	Goolab Sing, son of Muher Sing, through Punjab Sing, his brother, Jut.		0	0	10	Ditt.	Ditto.	Ditto.	Ditto.	Ditto.
Ditto.	Ditto.	73	Goolab Sing, son of Mohur Sing, through Mehtab Sing, his brother.	 Cultivated, Uncultivated,	1 1 0 1	1 0 0 1	1 5 16 1	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
Ditto.	Resident.	74	Madha, son of Suddah, Rajpoot.		1	4	0	Ditto.	I am one of the partners in this common holding, and in occupancy of an absentee.	Note. Holding is common to all; and this tenant is recorded as hereditary cultivator.	Has no claims whatever to the prejudice of other co-partners in a common holding.	Supdt. will attest this and record in Pro-

												prietary Col. and not tenant's name in Col.
…itto.	Ditto.	70	Nubbee Bux, son of Peer Bux, Rajpoot.		0	7	12	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
…itto.	Resident of Kulair Ghooman.	76	Heera Sing, son of Kan Sing, Jut.		3	0	11	Same as Nos. 8 and 9.	Same as Nos. 8 and 9.	Same as Nos. 8 and 9.	Same as Nos. 8 and 9.	Same as Nos. 8 and 9.
Ditto.	Ditto.	76	Heera Sing, son of Kan Sing, thro' Kam Sing son of Soondhee, Jut.		2	6	16	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
…son of Soomund …poot.	Resident.	79	Mullung, son of Buhadoor, Tehlee.		6	0	0	Recorded as gair mouroosee in Khusreh.	Has held 40 years but completely at will of land-owner, and agrees to give up when required. Will take a lease of 3 years, (putta) and after pay in grain.	Has held only 15 or 16 years. Brought him from another village and located him here myself; quite my tenant-at-will. He is my "*Sepee*," an oil man, will take at ⅓rd butai in future. Then agreed to give 3 years lease as suggested by assesors, at cash rates; afterwards to pay in butai.	Quite at will of land-lord being "Sepee," but as he has paid in cash rates for last Settlement without rent, he should have a lease for 3 years at cash rates plus 20 per cent rent, to re-imburse him for hard seasons; afterwards he will be ordinary tenant at will and pay at grain rates as mutually fixed. Land-lord will not have power of eviction except after the lease.	Confirmed.
…son of Mootsud-…poot, Manager …, son of Sirdar	Ditto.	19	Sundea, son of Goora, Sweeper.		9	6	14	Ditto.	Has held only since settlement, agrees to give up whenever landlord requires and will pay @ ⅓rd butai rates plus 8 seer per maund for rent.	This is my sweeper; I gave him the land 12 years ago, and can evict him whenever I like. He will pay @ ⅓rd butai and 8 seers per cent for rent.	A mere tenant at will, being a sweeper.	Ditto.
…n to the sons of …Khan, out of …Allee Khan.	Residing in Logur.	91	Uchra, son of Jy-Sing, managing for Purema, son of Joga Sing, Jut.		20	2	8	Ditto.	Has held for 15 years, agrees to give up whenever required to do so by landlord. Will pay @ cash rates plus 20 per cent for "rent."	He is quite my tenant at will, as held only 15 years. He may pay at cash rates, if he agrees to give 20 per cent for rent.	Tenant admits he is tenant at will.	Ditto.
Ditto.	Residing in Kulari Ghooman.	92,130	Golab Sing, son of Mohur Sing, Jut.	Khalsa, Butaee,	3 2 1	6 7 7	13 9 4	Ditto.	Same as No. 10.	Same as No. 10.	Same as No. 10.	Ditto.

of Landlord.	Description of Tenant.	No. of Khuteonee.	Name of Tenant.	Area of his occupancy.	G.	K.	M.	Period of occupancy if entered in Khusrah.	Statement of Tenant.	Statement of Landlord.	Verdict of Assessors.	Order of Attesting Officer.
on to the sons of Khan, out of Put- e Khan.	Ditto.	Ditto.	Ditto through Punjab Sing, brother of Golab Sing, Jut.		2	6	13	Recorded as gairmouroosee in Khusrah.	Same as No. 10.	Same as No. 10.	Same as No. 10.	Ditto.
Ditto.	Ditto.	Ditto.	Golab Sing, son of Mohur Sing, through Mutab Sing, (Jut.)	 Cultivated, Uncultivated,	2 2 0	2 1 1	9 9 0	Ditto.	Ditto.	Ditto.	Same as No. 10.	Ditto.
Ditto.	Ditto.	92	Lal Sing, and Khurkoo, sons of Ameer Sing, (Jut,)		0	2	14	Ditto.	...	...	...	Absent to-day. Superintendent will attest this.
Ditto.	Ditto.	93	Hera Sing, son of Kan Sing, (Jut).		1	2	4	Ditto.	Ditto.	Ditto.	Ditto.	Confirmed.
Ditto.	Ditto.	Ditto.	Hera Sing, son of Kahn Sing, through Khan Sing, his brother, (Jut).		0	6	5	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
mon to the sons of a, with equal shares.	Resident.	104	Ameera, son of Ghuseeta, (Jut).		13	6	8	Recorded as proprietor, but afterwards altered to hereditary cultivator.	Presented copy of an order of court given at last settlement declaring him to be hereditary cultivator but to pay no rent.	Ditto.	Ditto.	Tenant sued for ownership at last settlement and got this order; he was to *pay no rent*. Superintendent will submit the misl for re-consideration.
Ditto.	Ditto.	106	Bann, son of Molaim, (Jut).		13	3	6	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

Ditto.	Ditto.	107	Shahzada son of Gama, (Jut.)	12 6 2	Ditto.	Same as in No. 27.	Ditto.	Ditto.	Same as in No. 27,
Ditto.	Ditto.	Ditto.	Nada son of Gama, (Jut.)	0 10 16	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
Ditto.	Ditto.	105	Kumma and Bhugela sons of Gama, managing share of Mstt. Bhanee, wife of Ameer, (Jut.)	25 2 2	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
Ditto.	Ditto.	108	Khuttoo and Julalee, sons of Molaim, (Jut.)	12 7 18	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
Ditto.	Ditto.	110	Milkhee, son of Ghusseeta, (Jut.)	14 6 3 Cultivated, 14 5 19 Uncultivated, 0 0 4	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
Ditto.	Ditto.	109	Mungal and Kumma, sons of Boora, (Jut.)	12 2 2 Cultivated, 12 2 0 Uncultivated, 0 0 2	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.
mmon to entire village.	Resident.	130	Sundeah, son of Goorah, sweeper.	0 7 10	Recorded as hereditary cultivator period of occupancy not stated.	Same as No. 19.	Has held only 8 or 10 years. He formed this field out of some waste land near village site with my consent, being village sweeper.	Same as is No. 19. Quite a recent reclamation. He is a sweeper and at the will entirely of Lumberdars of village.	Confirmed.
Ditto.	Do. Mafeedar.	122	Mst. Nundee, Bhola, Shah's wife, and Nehal Shah disciple (Fakeer.)	30 7 0 † Khalsa, 15 3 15 * Butaee, 15 3 5 † Cultivated, 15 3 12 † Uncultivated, 0 0 3 * Cultivated, 7 7 12 * Uncultivated, 7 3 13	Ditto.	Has held since village was founded, land is attached to a "Takheea," he built it and the well. There is a fair held here, landlord cannot evict us. The land was lately resumed (being Mafee) since when we held @ ½ rates; we have never paid "rent" will pay @ ½ cash rates and rent as fixed by Assesors.	Was Mafee; belongs to Takeea; we do not wish to have power to evict; half has been resumed, they may pay @ ½ cash rates and 1 R. rent as fixed by Assessors.	Here complete protection should be given on this condition as long as Takeea is maintained and tenant cares for interest of village, landlord must not evict. If tenant fail to fulfil this condition, special punchayut will settle the issue to hold on the land and Takeea. They should pay @ cash rates but the ownership should be acknowledged by ex-mafeedar by payment of 1 R. per annum. Tenant may cut and plant trees, sink wells, but not sell nor mortgage.	Very proper and confirmed.
Ditto.	Do.	123	Dewan Shah, son of Rooldoo Shah, Mafeedar in partnership with Sun dee Shah, son of Kasumshah, (Fakeer.)	2 5 19	Ditto.	Same as No. 36.	Ditto.	Ditto.	Ditto.

...f Landlord.	Description of Tenant.	No. of Khuteonee.	Name of Tenant.	Area of his occupancy.	Period of occupancy if entered in Khusrah.	Statement of Tenant.	Statement of Landlord.	Verdict of Assessors.	Order of Attesting Officer.
...o entire village.	Do. (Mafeedar).	124	Azeem Shah, son of Sher Allee Shah, and Meeran Bux, sons of Noor Mahomed (Moodla).	7 2 2	Recorded as hereditary cultivator period of occupancy not stated.	Same as No. 36.	Same as No. 36, bnt as land is attached to mosque "rent" charge is altogether excused.	...	Very proper, and confirmed.
Ditto.	Ditto.	125	Mulung Shah, Jeelanee Shah, Bundoo Shah, sons of Baoo Shah, Mafeedar in partnership with Juwahir Shah, and Kalee Shah, Jeewun Shah, Amam Shah, Mungul Shah, Allee Shah, sons of Monuwur Shah, and Uttar Shzh, sons of Sher Allee Shah, (Fukeer).	2 6 19	Ditto.		Same as No. 36.	Same as No. 36. Tenant is "Takeeadar," and the well is Mafee, so only 4 annas rent ought to be demanded and no more, the area being very small.	Ditto.
Ditto.	Ditto.	126	Manul and Khuttos, sons of Nihala (Bhurraee).	2 5 8	Ditto.	Same as No. 39.	Same as No. 39.	Ditto.	Ditto.
Ditto.	Ditto.	127	Juwahir Shah, Nundee Shah, Meenhe Shah, sons of Nihal Shah, (Fukeer).	2 4 8	Ditto.	Ditto.	Ditto.	Ditto.	Ditto.

...ested before me this 5th day of May 1864, in open Court at Amritsur in the presence of whole community, before Lieutenant Hudlestone, Assistant Settlement Commissioner, and Agha Kalababid, Extra Assistant Commissioner, with the aid of marginal Assessors, and signed by Lumberdars, Putwaree, and same Assessors.

(*Assessors.*)

(*Signed,*) Easur Sing, *of Kuseel,*
Golam Nubee *of Gugreewal,*
Jwala Sing, *of Kuler.*
Chahur Khan, (an Hereditary Cultivator)
Ameer Bux, Ditto, Ditto.
Further testified to by
Kaloo Khan, *Lumberdar,*
Fouja Khan, *Ditto.*
Mola Ram, *Putwaree.*

EDWARD A. PRINSEP,
Settlement Commissioner, Amritsur.

B.

Memo. on the question of Hereditary Tenants, by P. S. Melvill, Esquire, Officiating Commissioner, Amritsur Division.

1. The argument adduced by the Settlement Commissioner of this Division, for setting aside the record of the last settlement and making an enquiry *de novo* into the circumstances of tenants who were then recorded as hereditary (mouroosee) is that that record was drawn out without regard to the custom of the country, and that the introduction of the very terms *hereditary* and *non-hereditary* was an innovation.

2. The record of the last settlement was of the nature of a solemn compact (*a*) entered into between the Government and those whose rights were therein set forth. It should not therefore be lightly set aside. It may be granted, however, that Government would use a wise discretion in allowing its revision if it could be shown to be incorrect.

3 Is, then, the record of hereditary tenants opposed to the custom of the country? Before this question can be answered in the affirmative, it must be shown that the relations between the land-lord and tenant were so defined as in their action to constitute a custom. (*b*) In my opinion there was practically no such custom, however easy it may be to say theoretically that there ought to be. There were but few villages in any part of the country with which I am best acquainted, viz., the submontane tracts between the Jumna and Ravee, (*c*) in which the proprietors retained the privilege of lordship over the soil. In such villages it is no doubt true that the proprietors did exercise an appreciable and actual sway over their tenants, and that they did now and then oust a cultivator or change his occupation from one plot of land to another. But in the majority of villages the kardar or jageerdar was supreme. Land was abundant, and the difficulty then was to get cultivators to till it. The proprietors were unable to raise the productive capacity of the village, and then the kardar or jageerdar located cultivators, or let out the lands to the tenants of a neighbouring highly cultivated village, of which description there were instances to be met with here and there. The hand of these superior individuals fell with pretty equal pressure on proprietor and cultivator alike. (*d*) The value of each class was estimated at its cultivating power, and beyond a few petty dues the proprietors were, as a rule, shorn of their distinctive rights. They rarely were able to bring in cultivators from without, and as to ousting a tenant they dare not do it. When enmity prompted the desire to get rid of a tenant, this end might only be attained by the tender of a *nuzarana* to the *hakim, i. e.*, the kardar or jageerdar. I therefore state that there was no such action between the proprietors and tenants as can be held to form a

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(*a*) [Note by Sir Robert Montgomery, late Lieutenant Governor.] "The compact was for term of settlement only, and on revision, I imagine errors must be corrected." R. M.

(*b*) This is mere opinion. In Hoshyarpoor settlement report Mr. Melvill remarks :—"This question, "(viz., tenancy) can only be decided in viewing the circumstances of each case, no period can be fixed." Again in Amballa Report. "It is difficult to fix any limit up to which posseseion should constitute a right "of hereditary "occupancy. Such cases must be determined on their merits with reference to the circumstances *attending the tenure*"; "which would imply, that in those days Mr. Melvill did believe there was such a thing as "custom." E. A. P.

(*c*) We are not referring to any tracts, except the districts in which settlement is now proceeding. There must be no generalizing. E. A. P.

(*d*) All this is general, and refers merely to such cases and places where no (1) *permissive*, or (2) *constructive* or (3) *beneficiary* occupancies can be traced. E. A. P.

B.

custom for guidance now. (*e*) There were doubtless certain prescriptive services rendered by all classes of tenants to the proprietors, and it would be well to ascertain these and to make them more or less incidents of the tenure in future. But in treating of hereditary tenants the primary and really important question is, the right of the proprietors to oust them from their holdings, and as no such right was ordinarily exercised in the Sikh time, clearly no argument can be deduced from the practice in vogue at that time. (*f*)

4. When the Sikh rule was abolished the prices of agricultural produce were very low, and consequently there was great difficulty in realizing the revenue. The proprietors were commonly glad to induce any of their tenants to pay in cash. When the first Settlement was made there was the same unfavourable state of market, and by that time the pressure of the summary settlement had begun to be severely felt in consequence. The same desire still existed on the part of the proprietors, who were only too glad to escape a part of the responsibility involved in their revenue engagements with Government. (*g*) Thus it was that there was not uncommonly an inclination on the part of the land-lords to accord to their tenants the perpetual occupancy which was perfectly well understood to be involved in the term *Mouroosee,* and to be accompanied with the payment of cash rents. (*h*) In many cases the land-lords resisted the claim of their tenants to this title, and the matter was judicially decided. (*i*) Now is it just that men who have borne the difficulties connected with a money assessment in the earlier years of our rule should be put under the absolute power of the proprietors (as they are being at present) now that by the rise of prices land has become so valuable? I think not.

5. There are two descriptions of hereditary cultivators, those who were recorded as such at the last settlement by an order of Court, and those who were recorded as such with the consent of the proprietors. It seems idle to qualify the value of this consent by saying that it was given because the result of one or two contested cases in a village showed which way the decision would lie if other cases were instituted, and that therefore rather than institute a fruitless suit the hereditary tenure was allowed to be placed on record. It is clear that had the consent been withheld and a case instituted, the result would have been the same as was actually arrived at without the intervention of the Court; and therefore in point of equity there can be no distinction (*j*) drawn in favour of the *Mouroosee* tenant by decree of Court as against him who was so recorded by consent of the land-lord. On the contrary the advantage inclines to the latter, for there can be no question that fre-

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(*e*) This is in no way conclusive if custom can be proved. E. A. P.

(*f*) We are told eveywhere that there are several tenants who can be evicted. (1) by nearly all District Officers, (2) by two committees held at Amritsur and Butala, (3) by enquiries made in 10,000 holdings already looked into. These facts are stronger then opinions given in a general way. E. A. P.

(*g*) Because the revenue was oppressive it does not follow rights in land are to be over-ridden by a liberal Government, which gives a margin of rent, and therefore a value to property. E. A. P.

(*h*) The Putwaree entered who had 12 years occupancy as hereditary cultivator, and thus it has stood till to day. There was no enquiry. E. A. P.

(*i*) In very few cases indeed, as can be supported by actual statistics, perhaps not 300 cases out of 50,000 holdings. E. A. P.

(*j*) But there can, inasmuch as in one there was confronting and enquiry into the particular case, in all others they remained hereditary cultivator, because Putwaree received the 12 years occupancy definition, and so filled in the entry, without any enquiry having been made from that day to this. E. A. P.

quently the self interest of the land-lord prompted him to acquiesce in the hereditary status of his tenant, to say nothing of the sense which most men of all nations have of the right of prescription. But under the settlement now being made the hereditary tenants by decree of Court are left untouched, whereas the others are all undergoing a sifting (k) which for the most part lands them on a border where the utmost they can rely on is the right to cultivate their lands for five or ten years longer. Is this just, or expedient? I think not.

6. Take another view. In the Goordaspore district, there is a tract of hill country lately transferred from the Kangra district, the settlement of which was made for 30 years, by the late Mr. G. Barnes. (l) I do not think it likely that the people of this tract will consent to undergo the turmoil of a new settlement till their term expires, which will not be for some eighteen years hence. There, tenants have been recorded as hereditary in precisely the same manner as they have been in the plain districts of this and the other settled divisions of the Punjab. (m) If the system now being carried out by the Settlement, Commissioner is sanctioned by Government we shall have not only the anomaly of men with equal rights classed under widely differing conditions in the same village, but in two separate portions of the district. (n) The neighbouring districts of Hooshiarpoor and Jullundur contain tenants whose hereditary occupancy cannot now be tampered with, but have no better right to retain it than those who are now being placed at the mercy of their land-lords. (o) Is it wise or just to create an exceptional state of things in one division, or portion of a division, which it will not be possible, owing to the mere efflux of time, to introduce elsewhere? Hardly so.

7. Taking an abstract view of the question it would appear that the present enquiry is followed by no sound (p) principle of adjudication. It would seem to be a matter of equity and in conformity with the principles of property, that men who had cultivated the same land for a number of years (say twelve) during the Sikh rule, when the proprietors were but little better than themselves, should be permanently secured by our Government in the occupation of that land. That was the view taken by all the officers who had to deal with settlements at a time when the anarchy and irregular conditions of tenancy during the Sikh rule were much more vivid than they are now. (q) Many individuals who were in reality tenants were thus recorded, and rightly so, as proprietors at the first settlement, for they had shaken off (r) every vestige of control, or more correctly speaking the control had fallen into dissue, or had been removed by the favoring hand of the local *Hakim.* Of the rest we see some still protected by the judicial award, and some thrown aside by a wind which brings power to the landlord but ruination to themselves. (s) Uninter-

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(k) Most properly so, if customs exist, and no account was set to them before. E. A. P.

(l) This a generalizing; we have not touched Kangra, each tract or district must be considered separately. E. A. P.

(m) There may be a reason for it which will come out on enquiry. E. A. P.

(n) Not in the same village; this argument is forced. E. A. P.

(o) We really cannot say if this position is true; nor do we wish to generalize. It is enough to consider local usages separately in each pergunah or district, as it comes under consideration. E. A. P.

(p) What is there sounder than to follow customs as they exist and pull with the people? E. A P.

(q) The Chief Commissioner in his No. 1010, dated 11th December 1855, to Financial Commissioner, lays down that this view was altogether incorrect if the nature *of occupancy* was not gone into. E. A. P.

(r) Incorrect, for the *right of eviction* was exercised, and all the reports of Deputy Commissioners now confirm this important point, which was before overlooked. E. A. P.

(s) There must be discrimination. E. A. P.

rupted possession of the same lands for 30, 50, 100, aye and 150 years is unheeded (*t*) because forsooth the man is a menial (Kumeen), or the resident of a different village (Pahee)! surely this is not just. Prescription is set aside, custom there is none, (*u*) and what remains but a desire to elevate the landlord class? This desire is no doubt laudable, but it is not to be encouraged to the destruction of rights as sacred as those of the landlords themselves.

8. But it is said that the voice of the country is in favor of the steps being now taken. This I very much question. (*v*) Indeed I would almost venture on an absolute denial. The proprietors, of whom I have lately conversed with several leading members, declare that they have no intention of ousting their tenants of long occupancy provided they yield due obedience to them. (*w*) They at present feel that it would be disreputable to acknowledge such an intention. I believe they did not petition for any such a course as is being now taken towards their tenants. (*x*) They acknowledge frankly the right of a man who has cultivated the same land for generations to remain in possession thereof so long as he conducts himself appropriately. (*y*) All that they really desire is that some measures should be taken to prevent their hereditary tenants from insulting and disregarding them. It is highly expedient that some measures should be taken to this end, and as above stated it would be well if the incidents of the tenure were laid down, their neglect being followed by entire or partial extension from the land. This would be to supply omissions in the record of the former Settlement, which is a more suitable course than ignoring it. (*z*)

9. How is it, then, that those tenants who have already undergone the reducing process have acquiesced in it? They have not acquiesced in reality. (*aa*) They have done so ostensibly because they believed that the decree for abolishing their *mouroosee* tenure had gone forth from Government, and because, having this belief, they were desirous to conciliate their land-lords. But that they are *satisfied* to renounce their tenures is not the case, how could it be so? (*bb*) The proprietors acknowledge that the tenants are even now saying it would be better for themselves to be ousted at once than to have the prospect of annihilation ever before them for the next five or ten years. Were one of them to be turned out from his holding, there would be a great commotion. (*cc*)

The proper course seems to be to respect (*dd*) the settlement record, and to now write down every tenant as hereditary who was so recorded at the first settlement, except in individual instances where it may be shewn that there was a flagrant error. (*ee*) It is no light thing to throw aside a record made with the formality and publicity of a settlement. If the first settlement is disregarded, it may well be a precedent for setting aside a few years hence what is now

(*t*) Unheeded only where right of eviction is proved or admitted, and the tenants frankly say so. E. A. P.
(*u*) Incorrect, there are customs. E. A. P.
(*v*) Judge by the results, not a complaint. Facts are better than denials. E. A. P.
(*w*) What is this but to have the subordination recognized? E. A. P.
(*x*) They came to me in a body in every district. E. A. P.
(*y*) What does this conduct mean?
(*z*) Here then it is admitted "the incidents of the tenure" have been omitted from the record. What do these mean? E. A. P.
(*aa*) Facts are better than denial. E. A. P.
(*bb*) See my statistical result. E. A. P.
(*cc*) I do not take this view, for I know the people admit everywhere such mistakes were made. E. A. P.
(*dd*) Respect it certainly when no injustice has been done. E. A. P.
(*ee*) I say every error. E. A. P.

B.

being done, for opinions are always liable to change, and the excitement that will follow the ousting of these tenants will inevitably draw attention to the matter. That the proprietors, whatever they may now say, will oust tenants who are placed in their power, there can be no doubt, for the demand on the part of the land-lords for land to cultivate is yearly increasing.

10. The question of the occupation of land not his own by a member of the proprietary community is, as stated by Mr. Prinsep, (see his printed rule in the case in Mouza Rungpoor Lallpoor), beside the question of ordinary tenancy, and need not be dwelt on here. (*ff*)

11. The object of this memorandum is to protect the *occupancy* of cultivators who were recorded as hereditary in the last settlement. There is nothing objectionable in the word *hereditary* mouroosee) ; on the country it is expressive and appropriate. I say nothing about the adjustment of rents, a matter which is always open to decision rccording to the varying circumstances of the time.

12. In conclusion I would remark, that although no general, formal enquiry, (*gg*) so far as I am aware, was made at any of the regular settlements heretofore undertaken in the Punjab, yet every settlement officer had the question brought before him in the hundreds and thoustands ot suits that he was called on to adjudicate. It is not to be supposed that a man of Mr. G. Barnes' eminent talents, experience in revenue matters, and keen sympathy with landholders, would have made the mistake of recording as hereditary tenants the *Kumeens* and *Pahees* had they not an equitable title to the tenure, and that all other settlement officers would have done likewise.

(*ff*) Why is this point avoided ? E. A. P.

(*gg*) This admission is important? There was " no enquiry, " so we are to recognize and uphold mistakes and omissions when attended with injustice and when they run counter to customs everywhere admitted. E. A. P.

C.

Report from Mr. E. A. Prinsep, Settlement Commissioner Amritsur Division, to Major Edward Lake, Financial Commissioner for the Punjab, No. 111, *dated* 21*st March* 1865.

1. In continuation of the correspondence ending with my No. 12, dated 12th January, I consider the time has arrived for me to take the orders of Government on a very important point connected with the tenant question, now under consideration.

2. You are aware, it was urged by me before the Lahore committee (and I do not think my statement was particularly impugned) that, as far as a reference to settlement reports could enable me to judge, there did not appear to have been any uniform or fixed principles which guided officers in the decision of disputes between proprietors of land and that class of tenants who laid claim to a right of occupancy.

3. Each officer seemed to carry out the conclusion he had come to in his own experience, guided to a certain degree by the Directions to Settlement Officers North-Western Provinces. The result has been a very varied practice in recording what tenants were to be entered as "hereditary cultivators," and what mere "tenants-at-will."

4. I wish now to be instructed, whether in isolated cases even, that may come before me and my subordinates we are to put the issues with reference to local usage, and the mutual relation that may be discovered to exist; or to considerations of any other and special character, which have for their object the raising up or maintaining a new class of cultivators, having (for it amounts to nothing less) the position of subordinate proprietorship.

5. I wish to make it the subject of special reference, whether Chief Commissioner's letter* No. 1010, dated 11th December to address of Financial Commissioner in the year 1855, and laying down that officers were to make particular enquiries, and learn the varied customs of the country, the tenures that existed, to ascertain the nature and circumstances of such tenures and not merely the length of occupancy; is to guide me in deciding disputes of this kind, which may come up before me in the usual way by a regular suit instituted under terms of Financial Commissioner's Circular No. 33 of 1860, allowing of rectification of errors of settlement.

6. I wish to be instructed whether to find out the particular custom and relations existing regarding classes of people, about whom little is known in the records of the district or indeed the records of last settlement I am at liberty or not to call in the aid of assessors, chosen from among the agriculturists, and who may represent both interests at stake, to help me in coming to correct conclusions, as the people would do among themselves, or the old Sikh Kardars would do, in unravelling the truth in such disputes.

7. During the course of enquiries made in this settlement, which have been reported in my No. 12, dated 12th January last, I have discover-

* See Appendix No. VIII, Part I, Tenant papers.

ed that the cultivators as a rule, can be divided into certain great classes and families regarding which general and particular usages are known to the people; and under the test of such circumstances, they are able to define what tenants are entirely or partially subordinate to individual owners of land; who have derived their status and occupancy from sources other than what may come into the definition of permissive or constructive occupancy; who, again, hold land under some kind of agreement made and understood; who can be evicted from their fields at the will of the landowners, and who cannot; who have privileges and what they amount to; in fact, all the incidents known among the people, and yet often kept concealed from the knowledge of officers of the greatest experience.

8. Some of these chief incidents, which can be arranged so as to form general principles, I have gathered together, out of enquiries made in 10,000 holdings in 7 purgunnahs, and put them into the form of a schedule, which was submitted with my report No. 12, dated 12th January 1865.

9. I forward another copy of this schedule,* which I have had printed (and which I wish to place as No. 30 of the series of settlement papers), and now take the opportunity of obtaining the sanction of Government to my issuing this schedule, under authority, for the guidance of my assistants. It is based entirely on local usage, and contains the gist of a large mass of cases that have come under notice and careful consideration; and I can confidently recommend it, as likely to prove of much use to officers who are not acquainted with the agricultural classes.

10. There is nothing in this schedule but allows fullest scope for every possible kind of exceptional tenant occupancy; and as further experience is acquired, additions and improvements can be made to it afterwards. It supplies a chief want, and if authoritatively confirmed, it will relieve me of the charge that was made against me before the tenant committee (and which may be made again) that I am wishing to introduce my own views; and effectually put a check upon officers (including me among their number) carrying out their own opinions, or the bent of foregone conclusions.

11. In making mention of the disputes that come before the Settlement Courts, I allude here merely to those cases which can be instituted in a regular way, and come within judicial competence according to the procedure laid down for the conduct of settlements.

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* See Appendix No. IX, part I, tenant papers.

D.

Copy of a letter No. 201, dated 25th May 1865, from Mr. E. A. Prinsep, Settlement Commissioner, Umritsur Division, to Major Edward Lake, Financial Commissioner, Punjab.

1. I beg to remind you that as yet no reply has been received to my No 111, dated 21st March last, on the desirability of authorizing the officers of this Department to adopt the schedule submitted, whenever practicable, in the investigation of cases between land-lord and tenant; in which reference I took occasion to enquire on what general principles the decision in such cases should now be passed.

2. I beg to point out that it is very necessary that I should receive a reply to this reference. If the principles we are now pursuing are in accordance with local customs, and with the rules laid down in a letter of the Chief Commissioner in 1855, then there does not appear to me to be the shadow of a doubt that our procedure is proper, just, and judicious. If proper, then there should be no further delay in supporting our recommendations. If not proper, then we should be corrected, and other instructions should be sent for our guidance.

3. At present, I am placed in this position of being open to the charge that I am enforcing my own views in the decision of such suits when brought in the Regular Courts. Whereas, I am satisfied that the principles laid down in the schedule are really drawn from a large number of cases that have been enquired into; some of which have been referred to Judicial Court and been made into rulings; and all of which have been based on the opinions of two Committees, convened for this purpose.

I do not think it is fair to leave me in this position, when all that I solicit is a general authority approving the procedure reported.

E.

Copy of a letter No. 78, dated 28th February 1865, from Mr. E. A. Prinsep, Settlement Commissioner Umritsur Division, to Major Edward Lake, Financial Commissioner, Punjab.

1., In continuation of my No. 12, dated 12th ultimo, I beg again to bring before the attention of Government the propriety of some early steps being taken to push to a conclusion the consideration of the tenant question; that I may be in receipt of final instructions in time to enable me to shew the result of the enquiries that have been made, and are still being made, in the new settlement records.

2. I believe you are waiting for the report of the President of the Tenant Committee which was convened at Lahore last month; but if it has not been received, I beg that a communication may be addressed to the Secretary or President of that Committee, for 6 weeks have now elapsed since the opinion of members was taken.

3. According to permission of His Honor the Lieutenant Governor, given in a demi-official letter of Mr. Secretary Thornton, dated 3rd July last, I am still prosecuting enquiries in the way previously reported. In the 2 districts of Umritsur and Goordaspoor these enquiries have now been brought almost to a conclusion. The next stage is to bring the results upon the new records; and it is absolutely necessary that no further time be lost, or progress in settlement work generally will be seriously retarded.

4. I am still of opinion that a 2nd Committee must be convened. There are several points that must be disposed of, and not the least among these is the demand which is now made and which has grown into a positive necessity for enunciating the principles approved of by Government, which are to guide officers in the decision of suits connected with rent, and the relations existing between landlord and tenant; as well as for considering whether or not a system can be devised to enable a landed proprietor to redeem by a money equivalent, or otherwise, the so called right of occupancy, which has been so extensively, and so wrongfully, created by officers at the last settlement.

5. I take this opportunity of suggesting most earnestly, that His Honor the Lieutenant Governor's opinion be taken at once as to the desirability of ordering all papers and memos. written on this very important question to be printed and circulated as soon as possible, or further time will be lost.

6. For convenience sake, I append a list of papers and correspondence which appear to me to bear more particularly on the question now under consideration, and certainly I do not think a wiser step can be taken than to make them available for general perusal; as this is a subject upon which the public at large are beginning to take increasing interest.

F.

Copy of a letter No. 199, dated 25th May 1865, from Mr. E. A. Prinsep, Settlement Commissioner, to Colonel Lake, Financial Commissioner.

1. I beg to draw your attention to my reference No. 78, dated 28th February last, on the propriety of final orders being passed in regard to the tenant question. Nearly three months more have passed over, and I am still kept without any instructions whatever.

2. I informed you in that letter that very serious impediments would result to the progress and conclusion of this settlement; particularly in the two districts in Baree Doab; if I was not put in a position to bring the results of the tenant enquiries on the new records.

3. In an earlier report accompanying the revised Budget, though I expressed a strong hope that Goordaspoor would be finished by the end of June, and Amritsur by the end of August, I was under the necessity of qualifying this hope, for I said that until orders were communicated on the tenant question, I could not engage to say whether that hope would be realized.

No. 21, dated 10th January 1865.

4. Not having heard anything on the subject to relieve me of the uncertainty of the position in which a combination of circumstances seems to have placed me, although four months have elapsed, I have felt constrained to take upon myself the responsibility of passing orders not to delay any longer the fairing of the records, the last stage in settlement work; and in doing so the result of the attested incidents & terms of occupancy will be recorded, unless I hear from you to the contrary.

5. There are several questions that have been submitted on this tenant question, but I beg to remind you that, though the settlement has come very nearly to a termination, I have not received a reply regarding any one of them. I beg with deference to point out that all this is very inconvenient, and altogether retrads progress. I have already lost heart as to engaging to say when the settlement will now really come to a close; and on this point (though I shall not relax in my efforts to keep to the old engagement) I feel all responsibility is passing out of my hands.

G.

Copy of a letter No. 2,279, dated 6th June 1865, from Colonel Edward Lake, Financial Commissioner Punjab, to Mr. E. A. Prinsep, Settlement Commissioner, Amritsur Division.

1. In reply to your letters No. 199, dated 25th May, and 201 of the same date, I have the honor to inform you that I have submitted for the orders of His Honor the Lieutenant Governor, my final report on the relations of landlord and tenant in the Punjab. In order that you may see how far my views agree, and how far they differ from yours, I sent draft of my report for your perusal.

No. 336, dated 26th May 1865.

2. I recommended some time ago to his Honor the Lieutenant Governor that you should be authorizes to enter in your revised record the "status" of tenants, as determined by your present enquiry, leaving parties who contest the revised entry to dispute it by regular suit. As no reply has yet been received, and further delay will interfere with the early completion of your settlement records, and thereby involve increased expense, I am quite prepared to share with you the responsibility of preparing your papers in the manner proposed ; at the same time, the record itself should contain some clue, by which in case of dispute it could be seen at a glance without referring to the previous record, that the tenant was one of those who had formerly a right of occupancy.

H.

Copy of a letter No. 250, *dated* *from Mr. E. A. Prinsep, Settlement Commissioner to Colonel Edward Lake, Financial Commissioner Punjab.*

1. After having kept a copy with the files of this office. I return with thanks your letter No. 336—2,096, containing your final report to Government on the relations of landlord and tenant, as considered and discussed before the Committee which was convened at Lahore for this purpose.

2. I think you are aware that from the commencement of our enquiries it has been the practice, after the attestation of the landlord and tenant statement has been brought to a conclusion, in each village distinctly to inform the parties that if any one has any further objections to urge against the entries recorded, or wishes to bring further evidence to support any statement that had been advanced, or was dissatisfied with the mode of enquiry, he was at liberty to bring a regular suit in the usual way.

3. Many parties have brought these regular suits, when a fuller investigation has been made by the Superintendent, and the former order has been modified, or reversed altogether. I an informed, after particular enquiries that I have made, that this indulgent provision is always announced, and everybody is aware of it ; so that it cannot be stated that in our efforts to mend matters we have overlooked the possibility of ignorant persons being hardly treated.

4. In order, however, to make it more certain that they have been so informed, I have lately directed, as I stated to you it was my purpose to do, that in each abstracted copy of the khuteonee given as title deeds to tenant holders of land, whose status has been altered at this settlement, distinct notice is to be specified at foot in the following terms. "This is an authenticated "copy of the recorded occupancy and terms of occupancy as attested at revised "settlement. If you have objections to urge, or consider your interests in any "way overlooked, you will be heard again, if you being a regular suit within "a period of one year from this date."

5. I have specified one year, not knowing if any longer term is to be allowed. If in the estimation of superior authority this period is not deemed sufficient, it can be afterwards extended by general proclamation, when the final orders of Government in this question are made known. For all present purposes, the shorter term will act as a greater stimulus to any one who is aggrieved to come forward and object at once before settlement is concluded.

6. To enable the Courts hereafter to know exactly the grounds on which the "status" was altered at this settlement, there are the landlord and tenant statements, which will be faired (to be a better record, guaranteed against future possible fabrications) and kept in the village bustahs ; so that references can be made to them at any future time. They will be duly signed, with all the formalities by the Superintendent, or Judicial Officer, who attested these statements.

H.

7. This will give full clue on occasions of future disputes of all such tenants who formerly were recorded as "having a right of permanent occupancy;" and I will now direct that a remark be added in the new khuteonees shewing the number in the landlord and tenant statements, which refers to the entry. This will give a complete clue without leading to unnecessary complications, and will I trust afford one more evidence of our readiness to give publicity to the result of our enquiries, and protection to both parties whose interests are concerned.

I.

Extract from Settlement Commissioner's Report of Settlement operations for the year 1864-65, addressed to Financial Commissioner Punjab.

Landlord and Tenant question.

34. The most prominent is the Tenant question. The result of my enquiries has been fully placed before Government. At my request a Committee was applied for, to consider the numerous bearings of this important question. That Committee was convened at Lahore in February, and they submitted their report in March. Though I am aware your final report has been sent to Government, it is to be regretted that as yet no final instructions have been received. It would have been a satisfaction to me to learn whether the orders, applied for during this settlement, to record nothing but the true and existing status between land-lord and tenant classes had met with the approval of superior authority. I feel the position of myself, and those under me, has been one of considerable responsibility.

Final orders of Government not received.

Appreciates Financial Commissioner sharing responsibility.

35. I have however, carried out the instructions contained in your last letter on this subject, No. 2279, dated 6th June, and take this opportunity to thank you for coming forward so promptly to share with me the responsibility of placing upon the new records the altered status of that class of tenants who were distinguished formerly under the general name of hereditary cultivators. Frankly admitting that even the enquiries now made may here and there have been imperfect, and some cases might appear deserving of reconsideration, I am quite satisfied we have done the right thing. Enquiry and rectification of mistakes of the grossest kind were greatly called for; and it would have been a reproach to the British Government to have allowed that state of things to remain unrighted, which has been discovered and reported in the several letters and papers collected on the subject.

Present aspect of question.

36. As instructed in your letter, I have reduced to record the results of the new enquiries in each village. A note is entered, from which it can easily be learnt hereafter, what tenants are in an altered position compared with the entry in the old records; and great pains have been, and are being taken, to keep every person fully informed of the nature and terms of his occupancy. To prevent anybody hereafter pleading ignorance, or non-attendance at the settlement, special measures have been taken to assemble and confront every tenant with his land-lord. Every objection is heard and disposed of. An attested copy of the record of occupancy is placed in each tenant's hands, and he is further informed that if he is still dissatisfied, has further objections to make, or evidence to adduce, he can bring a regular suit within one year from the date of the present enquiry. The present position of this question is such, that the new records can now be compiled and put in. It will rest with Government to decide whether the settlement investigation shall be accepted, as it stands, or any further rules or procedure be laid down to weaken or confirm the value of the new records, which we have been at so much trouble, (and which has cost us more anxiety than it has the Government money) to prepare and perfect.

I.

37. One thing is to be regretted, that definite instructions have never been received from the commencement. I trust the same silence is not going to be maintained in regard to a later reference, * that I have thought it my duty to make. If it is to remain in the power of the Courts hereafter to reconsider the entry made at the settlement, on the motion of either party advancing new objections not made at this settlement, although every opportunity has been given now to urge such objections, then I really must request you to lay down on what principles the District Courts are to hear and decide such further disputes. Before I dissever my connection with this settlement, I shall expect that some guarantee will be given to me by Government, that some such rule will be promulgated, in accordance with principles that have been reduced to record, and issued for guidance during this settlement. If this is not done I leave you to consider how very unfairly it will operate on all our proceedings. It is very necessary that some immediate instructions should be sent in reply to the reference which is here alluded to.

Procedure must be laid down for District Courts.

* My No. 201 of 25th May 1868.

LANDLORD AND TENANT

INQUIRY.

(REVISED SETTLEMENT).

AMRITSUR DIVISION

PUNJAB.

1865-66.

(PART III).

Report by Mr. E. A. Prinsep, Settlement Commissioner, on the Tenant Right question; shewing the final statistical result of the enquiries in the three Districts of Amritsur Division, after completion of Settlement.

Extract from Settlement Commissioner's Annual Report No. dated 13th August 1866, on the operations of the year 1865-66.

Extracted paras. from Annual Report by Settlement Commissioner on the operations of the year 1865-66, submitted in letter No. dated 13th August 1866, addressed to the Financial Commissioner, Punjab.

NOTICE OF ORGANIC CHANGES.

64. I wish now to make some observations on the organic changes that have been carried out in the old Settlement just closed, and which are contemplated in the new districts upon which we have entered.

Landlord and Tenant.

65. The Tenant Right question stands no further advanced than when I left it in last year's report. We are still waiting the orders of Government. The committee has discussed the question to a certain point; several letters have been addressed by me subsequently. I have sought to know (1) whether the results of our enquiries are to be accepted or not; (2) whether the egregious mistakes and manufacture of occupancy rights are to be rectified or not; (3) whether the simple procedure adopted now for adjusting the relations between proprietors and cultivators is to be recognized or not; (4) whether some new general principles should not at once be laid down to prevent misconception by the Courts of what these rights really mean, as recorded in new Settlement records; (5) whether, to aid in a consideration of this, it is not desirable to make known the customs and ordinary terms of occupancy found to prevail after a general scrutiny of some 10,000 holdings in 7 pergunnahs, which have come under enquiry, certain leading principles from which had been embodied in a schedule of tenant usages which I submitted in Printed Settlement paper No. 30. Final replies to these references have not as yet come, though the Settlements to which they allude are now completed; and the results of our enquiries have been carried out in the new records, with your consent, and, as I said before, (as far as we are able to judge) have received the assent of the parties interested.

Correspondence should be printed.

66. I have moved several times that the voluminous papers be printed, in order that the outside public, as well as the officers of the province, may study the question in all its bearings, and satisfy themselves whether the action into which I have been driven, by a desire to remove a great reproach, has been right and true; or the reverse. It is a pity that this request has not been conceded, for then a better judgment could be formed of the real merits of the question, by many who at present are reserving their opinions.

Is now being printed.

67. I am now officially informed that the Secretary of State for India has called for information of what we are doing. The whole of the discussions and explanations of the action we have taken are contained in the numerous reports already submitted. This being the case, I have thought the matter to be one of urgency. I have, therefore, caused the whole of the papers, properly arranged, to be printed. I expect them from the printer's hands in a few days. In forwarding copies to your office and other superior offices, I shall move that they be sent home to England, just as they are, as being "the further papers" which contain the fullest information.

68. As, however, the final returns have now been made up for Amritsur Settlements, I cannot do better then shew here briefly what has been the action of the revised Settlement in regard to the status of such tenants as were recorded before to have a right of occupancy.

Facts bearing on Tenant Right.

Statistical results.

69. The subjoined table will show the change in all three districts complete :—

	AMRITSUR.		GOORDASPORE.		SEALKOTE.		TOTAL.	
	Number.	Area.	Number.	Area.	Number.	Area.	Number.	Area.
Number of hereditary cultivators at last Settlement, ...	24,676	85,799	17,577	88,308	18,097	66,708	60,350	2,40,815
Number of tenants-at-will, ditto, ...	31,607	1,58,743	39,280	1,53,494	37,739	1,07,652	1,08,626	4,19,889
Total, ...	56,283	2,44,542	56,857	2,41,802	58,836	1,74,360	1,68,976	6,60,704

PART I.

Thus then there were tenants having rights, who are found to belong to the following classes, ... 60,350 2,40,815.

(1) Shareholders in village ownership, ...	3,616	18,168	2,345	8,922	2,469	8,291	8,430	35,381
(2) Long resident tenants, ...	1,760	12,374	7,762	54,713	5,041	22,177	14,563	89,264
(3) Mere village servants, ...	8,724	50,874	2,024	9,852	3,750	8,001	14,498	68,727
(4) Relations of proprietors, ...	337	2,720	344	2,565	721	4,104	1,402	9,389
(5) Persons holding mortages or lien of this kind, ...	639	4,197	313	3,499	3	18	955	7,714
(6) Paheekasht, non-resident tenants, ...	3,566	17,912	4,469	16,907	2,520	14,516	10,555	49,355
(7) Jageerdars, } or revenue free-holders,	85.	466	179	806	23	321	287	1,593
(8) Mafeedars, } ...	4,056	13,208	1,049	2,368	2,933	7,585	8,038	23,161
(9) Religious places, ...	1,040	5,690	84	273	634	1,681	1,758	7,644
10) Trustees and Managers, ...	118	489	7	107	3	24	128	620
Grand Total, ...	23,941	...	18,076	89,982	18,097	66,708	60,114	2,82,788

PART II.

Whose Status by this Settlement stands thus—

(**A.**) "*Declared to have occupancy rights.*"

	AMRITSUR.		GOORDASPORE.		SEALKOTE.		TOTAL.	
	Number.	Area.	Number.	Area.	Number.	Area.	Number.	Area.
(1) By order of } at last settlement,	787	3,124	1,162	7,068	1,048	5,547	2,997	15,739
(2) Court, ... } at this settlement,	960	6,393	521	3,159	2,530	9,240	4,011	18,792
(3) By mutual agreement as now admitted, ...	4,556	14,564	3,834	17,185	3,143	11,553	11,533	43,302
Total having rights of occupancy.	5,516	20,957	4,355	20,344	5,673	207,93	15,547	62,094

(B.) *"Lease holders and having no occupancy rights."*

(4) Holders for 2 generations agreed to by both, ...	430	2,344	153	838	663	1,435	1,246	4,617
(5) Special contracts Do. Do., ...	1,327	2,653	1,027	2,132	4,565	12,019	6,919	16,804
(6) On fixed leases for periods, ...	7,359	41,766	8,644	41,981	5,390	21,441	21,393	1,05,188
(C.) *"Tenants-at-will."*								
(7) By admissions, ...	7,078	28,594	1,436	8,526	257	2,313	8,771	39,433
(8) Claims to rights rejected by assessors, ...	1,291	5,731	1,408	7,161	1,132	3,067	3,831	15,959
Total number now reduced to tenants-at-will, ...	8,369	34,285	2,844	15,689	1,379	5,380	12,592	55,252
(D.)								
(9) Tenants made proprietors, ...	316	2,324	457	1,862	480	3,042	1,253	7,228
(E.)								
(10) Tenants who have voluntailry thrown up their holdings, ...	454	1,812	1,086	3,995	395	3,708	1,935	9,515
Grand Total, ...	24,558	1,09,265	19,728	89,857	19,123	70,323	63,409	2,69,445

PART III.

"Detail of how many paid rent and how many did not."

By former Settlement.	Who paid "rent,"	11,752	66,075	15,867	78,597	7,788	30,218	35,407	1,74,872
	Who paid *no* rent,	12,189	60,023	2,209	11,403	10,309	36,490	24,707	1,17,916
By this Settlement.	Who pay rent in *cash*,	22,901	1,00,627	13,475	57,463	13,833	49,664	50,209	2,07,754
	,, in grain,	1,026	5,323	4,793	27,126	1,501	4,313	7,320	36,762
	Who pay *no* rent,	1,281	3,315	1,460	6,268	3,789	16,346	6,490	25,929

3. Points of view considered.

70. I have arranged the analysis so as to admit of *three* divisions of enquiry. Part I, what classes of tenants were made out to have a right of occupancy at last settlement. Part II, what status is accorded to the same number of tenants by our recent enquiries. Part III, to what extent were the land-owners sufferers by the great and numerous mistakes arising from "the conferment," as it is called in several Settlement Reports, "of a right of occupancy by Government."

Tenants who have no rights under first point of view.

71. It will be seen that there were in all 60,000 so called "hereditary cultivators" in the old records, so that our enquiries affect this number, and not 2,00,000 as lately stated in one of the public journals. Under Part I, these are discovered to

	Number.	Area.
(1) Shareholders, ...	8,430	35,381
(3) Village Servants, ...	14,498	68,727
(6) Non-resident tenants,	10,555	49,355
Total, ...	33,483	1,53,463

range themselve under 10 main classes, Nos. 1, 3 and 6, aggregating upwards of 33,000, and cultivating $1\frac{1}{2}$ lacs acres, are admitted universally to have no rights adverse to the proprietors who gave them the fields to cultivate, under whom they are village menials, and the power to evict whom was always vested in the proprietors by a general local usage, which is unmistakeable.

Shareholders held under the usage of "*Mangamee,*" *i. e.*; agreement to give up whenever *asked* to do so. Here we find more than half of the total number, which (barring rare exceptions in the case of 3 and 6) are declared to have been altogether subject to the will of land-owners, and yet who were made hereditary cultivators under the 12 year rule, without reason or proper enquiry.

Relatives have no rights.

72. Similarly No. 4 are found generally to hold on a permissive tenure, unless the neglect of the owner should have led to usurpation of his rights, or it was expressly agreed that there was to be no surrender of the lands for reasons mutually understood and acknowledged.

	Number.	Area.
(4) Relatives of proprietors,	1,402	9,389

Mortgagers and Trustee Ditto.

73. No. 5, being holders of land under special terms of mortgage and management, occupancy rights could not arise out of the tenures upon which they held such lands.

	Number.	Area.
(5) Mortagers, ...	995	7,714
(10) Trustees and Managers,...	126	620
Total, ...	1,081	8,334

One-half have on rights.

74. Thus then, we have 36,000 out of the 60,000, who as a general rule were erroneously entered as having right of occupancy; and although many of class 2 7, 8, and 9 could acquire prescriptive right, custom was against it, as will be seen from my tenant-schedule.

Only instances of adverse occupancy.

75. The only classes answering to the probability of right by adverse occupancy are Jageerdars, Mafeedars and lands attached to religious places, but they only amount to about 10,000 holdings with an aggregate area of 41,000 acres, or about one-sixth only.

Under second point of view.

76. Under Part II, the present status of the same 60,000 holders will, be found, as admitted by the parties or as declared in the enquiries of this settlement, to be ranged under 5 classes, thus—

A. 15,500 are discovered to be of the tenant-right description; 3,000 hold their titles by a judicial order of court given at last settlement; 4,000 by a similar order now obtained in contested suits; and the remainder by consent of both parties.

D. 1,253 have been raised to superior status of proprietorship by consent, being of class (I,) under part I, who probably submitted to be recorded

as "Monroosee" under the idea that it meant (*irs*) a hereditary property from which they could not be evicted, so what mattered it to them their being designated under a name that was new and not fully understood.

E. In 1,935 holdings the tenants voluntarily threw up when confronted.

C. 12,600 are found to be mere tenants-at-will ; 8,700 by admission, "*Ahansar*" ; the remainder were declared after full enquiry by assessors, before whole village, after hearing every objection urged and repeated, to hold in a subordinate or permissive way entirely, many of them being "*Paheekasht*" or tenants residing in neighbouring villages.

B. The remaining 29,000, holding $1\frac{1}{4}$ lacs of acres, admitted they had, or were declared to have, no right to a permanent occupancy ; but to prevent sudden eviction or losses sustained by previous bad years, were brought under leases for fixed periods ; or fixed the periods themselves before they came to the Settlement Courts ; or held under special agreements to be fulfilled before land-owners could evict.

Occupancy right found only in one-fourth.

77. Thus then the enquiry has established that only 1 in 4 (not 1 in 5 as observed by you last year) have been maintained in the enjoyment of prescriptive occupancy, the rest are without doubt erroneously entered ; and if there were errors so great and so numerous regarding them, is it not right, is it not reasonable, that at this settlement they should be rectified.

Under third point of view, no rents.

78. I now call attention to the facts elicited under Part III. Would it be believed that out of 60,000 holdings 25,000 were recorded as "paying no rent"! At last settlement no rent was fixed, and so for 11 years, ever since, none has been paid, for two reasons : (1) because land was in a transition state, in many pergunnahs the Government demand, at summary settlement after the British took the country, was inordinately heavy, and did not leave sufficient margin for rent ; (2) because after settlement the Punjab Civil Code, Part I, Section XXI, Clause 13, stepped in and ruled that "rent cannot be enhanced within term of settlement."

All agree to pay rent now

79. What is the result now that land has a value ? Why that 50,000 have agreed to pay rent in *cash*, 7,000 in grain rates, and only 6,490 (greater number in Sealkote) holding 26,000 acres have been exempted from rent charges for special reasons ; chiefly either they are of class 3 or 9 under Part I, village servants, holding small lots of 1 or 2 acres in lieu of rations, because they have to render suit and service and therefore no rent is superadded ;—or, the lands being attached to religious places, scruples come in the way of demanding rent.

Property without profits is no property

80. Now could anything have been worse than locking up nearly half the land of these holders, professedly tenants (and three-fourths of these are *now* found to be tenants holding in a subordinate and permissive occupancy) against the interest of the rightful landlords ; declaring the latter to be responsible for Government revenue, and yet giving them no portion of the profits, and conferring (if this is the view to be taken) the position almost tantamount to sub-proprietor to the latter, without recognizing any obligation on their part, either to those who owned the property or to Government who demanded the revenue.

81. It is quite evident from the foregoing sketch that at least 25,000 landed proprietors have been deprived for 11 years of *their* just rights, owing to the mistake made at last settlement, of not defining the *existing* status, and the action of our Government in framing a rule in the Punjab Code "that no rent can be enhanced during the term of settlement," which was a novelty in itself contrary to the custom of the country. It has been the cause of excessive injury to the growth of property, and of direct pecuniary loss to those who, as a superior class of land-owners, did under the grain system during Sikh rule enjoy fees and perquisites, which really were the incidents of *rent* in those days; and who otherwise exercised the privileges of lease, ouster, change of fields, and the like, which were in like manner the incidents of *property*, as accepted in all other countries.

Landlords wronged, 25,000 in number.

82. In reporting on this subject, I deem it proper to dwell on this point, as I find His Excellency the Viceroy, in the letter quoted marginally, has recorded his belief in these terms. "The Governor General "in Council believes that *few if any of these* (1) "*cultivators* (herditary) will be found to hold *on quit rents*, "and (2) that the rents of most, if not all, are *liable to* "*increase according to the general rates which prevail*." Now as regards the (1) first, it has been shewn that the real facts in three districts are that, out of 60,000 hereditary cultivators 25,000 have been allowed a right of occupancy, but for ten or eleven years have never paid *any* rent; and as regards (2) enhancement, there is no liability according to the Punjab Civil Code, the text of which I give—" The rent of the hereditary cultivators *cannot be* "*enhanced within the term of settlement* beyond the fixed sum, or rate, nor can he be ejected so " long as he may contract to pay rent."

Opinion of Governor General met by facts.

No. 72 dated 13th May 1864, from Secretary to Government India, to Punjab Government, para. 16.

83. After this it cannot be said, as I have heard it urged, that though it may be true these tenants may have got too good terms at the first settlement, but taking the times as they were the proprietors have not been sufferers by these mistakes. To my mind the whole arrangement seems to have been one-sided, and pressing with the *reality of confiscation* on the proprietors as a body, which fully accounts for their complaining.

Injury to proprietors amounting to confiscation.

84. I suggest most earnestly that the first opportunity be taken to rescind this objectionable section in the Punjab Procedure Code, as under its ruling I believe in every district the greatest injustice is being done to proprietors who, now that the value of land is rising, naturally sue for enhancement of rent; but if no rent was fixed at last settlement (and that a first settlement, made when we were all new to the country) and the term is for 30 years (as in Kangra, Julundur and Ferozepore), it surely is worthy of the consideration of those who would protect tenant occupancy to see that such serious injury is not put on the landlord interest, that they are to receive no rent whatever for a whole generation simply because this section still stands in the Punjab Procedure Code disallowing it.

Rent section in Code should be repealed.

* * * * * *

94. I have no hesitation in affirming, on the experience I have gained during the last 7 years, and from the information I have collected from time to time, that this process of *annihilation of existing titles to land* in co-parcenary estates *is going on under our Government in amost extraordinary degree*; and unless an early remedy is applied, (for it

Great injustice done to rights.

all arises from our record system at last settlement not being built upwards from customs as they existed) a very serious injury will be sustained by a large mass of landed proprietors, who now are awaking to the fact that property in land *is* a valuable commodity, and are seeking to maintain what is admitted to be theirs, but that the records (of all things) come in to disturb them.

Met with in many districts.

95. In Kangra, Mr. Lyall has discovered the same omissions, and is alive to the necessity of bringing on the records the true status whatever it may be which regulates or measures rights in land. In Sealkote I found the evil years ago. In Goordaspore and Amritsur, these statistics shew that it has been largely at work there. In Lahore and Goojranwalla I am informed that similar anomalies will be found, though in these districts the fact of there being much waste land will have a tendency to cause larger discrepancies between possession and right according to ancestral shares. In Ferozepore I expect to meet the same thing. In Jullundur and Hoshyarpore, where villages are universally held by families descended from one progenitor, I believe the evil done at last settlement is even worse than in the Baree Doab. I will engage to prove this assertion in any 10 villages selected at random in both districts, provided that those estates are selected where the communities are all of one class and ancestrally connected. I am ready to prove that ***shares*** in some form or other ***do exist*** even to this day; are looked upon as the measure of people's title to property in the estates, *are* followed and adhered to in village transactions;—and yet there is no mention in the settlement misl. The tenures are recorded to be that "every man's occupancy is the measure of his right." The khuteonees give the interests within the separate holdings; ***but beyond this they are eternally silent.***

Custom is the only safety.

96. I know the objection that some hold to what I here disclose. They say the change is retrograde. The shares are obsolete, really they do not exist. Why stir up dormant rights? Why keep alive an infinitude of shares and their sub-divisions? My reply is simply this. I find this system is pursued and preferred in villages. *There* these measures of right exist. We chose to think them obsolete, the facts disclose otherwise. My orders are to base the settlement on ***village custom.*** I consider it is right that we should go by custom. It is this following out of policies, which we as a rule originate, that has done more to establish the general charge of settlement records being erroneous than anythiug else. We cannot do wrong if we act in the interest of the people, and base the fabric on what ***they prove to us to exist***; of course if these rights are dormant no one can restore them; but if otherwise, where is there any safety unless we follow exsisting usage?

New Pedegree Title Deeds shew this.

97. The great guide to us has been derived from the "Village Title Deeds." These I have often described. Several samples have been printed I am now bringing out a "complete exemplar" designed for a model village, shewing every type of tenure, how they arise, what form they take in the creation of that kind of landed property which makes up the village system. It will show better than any record at present existing, how the evil habit of blindly accepting the "possession tenure" can at least be avoided, and what are the different ways in which holdings will usually be found to represent a joint or divided interest.

Old views are now abandoned.

98. The more I have studied these two questions, the constitution of villages and tenant occupancy, the more clearly do I perceive how it came about at last settlement that the records were not made to show the existing status. The further back I go into the fiscal antecedents of this province, the more ready I am to give up my old views—derived I may say chiefly from a study of the revenue system, which is built out of books written for another province, instead of being raised up and perfected for the actual requirements of this province; *e. g*, it is commonly asserted that Government was always the land-lord, there was no property in land, all paid revenue alike, therefore there was no superior or inferior class; there was no difference between rent and revenue, so all notion of property vanishes; taxation was so high it left no margin for rent, therefore there was no real property; those who represented the ruler of the day removed the cultivators, and put in others, therefore there could have been no intermediate class, who really were land-lords in the sense we attach to this term.

Old axioms bore on revenue aspect. Arguments adduced.

99. This was my creed in younger days, but it is no longer so now. I can see distinctly that in laying down these axioms regard was had to *revenue*, but the true positions and incidents of property in the sense of ownership were lost sight of, simply and solely because the ruler chose to demand a rack rent. But it is contrary to fact to assert that property did not exist. I will guage this by the following considerations put in juxtaposition:—

(1.) The village is called after the name of some *founder* of the present proprietors.	(1.) Did a Kardar ever give a Government name to a village *he* founded ?
(2.) Land has always been *ancestrally held*.	(2.) Never would appear in the Government action ?
(3.) It is held on the most ancient laws of inheritance; when lapses occur owing to parties dying without issue, the nearest of kin succeed.	(3.) In the plains, why did not Kardars appropriate such *lapsed estates*, as was done in Kangra ? Simply because, in one case it was coparcenary and ancestral property; in Kangra, land was acquired grant by grant.
(4.) Land is *minutely divided* on this principle from time immemorial.	(4.) Did Kardars ever claim this incident ?
(5.) Boundaries of properties are known and *have been maintained from time out of mind*.	(5.) Why did Kardars appoint arbitrators so often to decide village boundaries, *even on waste* land, when they knew that waste belonged to Government ? This shews they respected the limits of tangible property.
(6.) The original acquisition was perhaps based on *purchase from private parties* or from Government.	(6.) Why from *private parties* if Governmen only was the landlord ?
(7.) Fines and fees have been borne times out of number by *proprietors only*.	(7.) Who paid these but the proprietors ? Why did Kardars make *them* always pay, and not the inferior cultivators ?
(8.) Capital expended in wells, gardens, &c.	(8.) Even when Kardars and Jageerdars spent money on wells, they never claimed the wells on going away, or on the jageer being resumed. Does this not shew such outlay was only in *the interest of revenue* ?
(9.) Within villages *minor estates* have been *sacredly respected*.	(9.) Why any such definition or respect, *if all were cultivators alike* ?

(10.) The right to mortgage has rested on *one class only, the superiors*; never on the lower cultivators.

(10.) Is there an instance on record of a Kardar mortgaging. If all cultivators were alike, why did not the inferiors enjoy right to mortgage?

(11.) Tenants have been located and ejected (known under such terms as "Charawa" *Anglice—a tenant put in by landowner*, and "Ahansar" a tenant holding on mere agreement in a subordinate way) by those who are admitted even by Kardars to be "Maliks" (proprietors.)

(11.) Then why say the relations of landlord and tenant were unknown?

(12.) The very terms "*Malik*" and "*Asamee*" are employed; in many places the proprietors are known as "*Waris.*"

(12.) Why are such terms used, if all were alike because they paid revenue alike. Why should such terms be so generally known, even in Kangra?

(13.) There are in every village those who are designated by *two names*; does it not show the superiors are held to have "*a property.*"

(13.) It shews there are two classes. One had rights and privileges, the other had not. Because revenue was paid alike this position has never been lost, and why not? because *a* property existed and was tangible with fixed incidents, privileges and obligations belonging to it.

(14.) In many places, notably in Jullunder, the old proprietors, once Hindoos, bodily became Mahomedans. Ask them why, and they say to be on the governing side, and so have less chance of their property being taken away wrongfully, or violently. Does not this denote ownership?

(14.) Do men change their religion for a fiction? Do whole villages and even tribes owning property do so without cause? Was such hardship borne merely by ordinary cultivators, or was it that the proprietors knew that land as a property was theirs, and even when all revenue was paid alike, still they would not lose their property.

(15) Kardars may have located tenants, but in the interest of *revenue* only. They took the Lumberdars with them, witness Jamkee, a large Cheema estate, once under Rajah Tej Sing's Kardars, who located tenants even in broken down wells, to prop up Jageerdar's revenue. Where are these strangers now? *All* vanished, and the land is again in hands of Cheema proprietors.

(15.) This argument will not stand. If Kardar located tenants because others were not owners of property, than how is it that in Nazool property belonging to Sikh Government, when we took the country, such estates conferred on strangers by the representatives of Government did not come into the Nazool lists, as "Furoohee," "Gardens," "detached wells," and "Rukhs"? What does this indicate, but that location was done only for revenue, just as Government Tehseeldars would do now-a-days.

(16) There was no difference between rent and revenue, all paid alike. But there was. Fees and perquisites were taken from inferior classes, under such terms as "ismee," "malikana," "biswee," "sereena;" was this no proof of *profit* from property when taken only by the superior classes.

(16) These fees, it is urged, were small, can scarcely be held to be proofs of property. They were small, simply because taxation was high, left no margin for rent. This merely shews that value of property was disturbed. It does not deny or repudiate the existence of property altogether.

Absolute rights in property did exist.

100. The above will give some notion of what I apprehend property was in Sikh time, and why it had no value. But a greater value being given now by the stability and moderation of the British Government to land in general, does not weaken the proofs of the existence of a superior and inferior class before; and if one party were "Maliks" before, exercising the absolute rights of property, as much as could be exercised under a rack rent system, it seems to me the inference is not correct, which you draw, that proprietary right was only created by our rule, because we gave it an *enhanced value*; or that the land was held on such a peculiarly unusual tenure, that the ordinary relations of landlord and tenant did not, and could not exist.

101. The view of the Tenant question you take in your last year's report seems to be based on the old notion that there was no such thing as absolute and indefeasible right in land as a property, tangible and beneficiary, previous to our rule. You would lead us to believe there were no mutual and subordinate relations existing between the acknowledged proprietor and his tenants, known all over the country as, "Asamee," "Paheekasht," "Oprahoo," "Vasee," and such like terms. Now is this the fact that all *were* alike? I appeal to you to state the results of the enquiries you personally conducted, when in camp the season before last, in some 40 or 50 villages in 6 pergunnahs, where perhaps some 300 or 400 tenants were catechised by yourself, in presence of those who gave the land to them to cultivate and before the whole village. Did not the tenants universally admit that they were subordinate; that they held the land permissibly, that the landowners had the power to evict, and that they were ready to give up when the fields were wanted, though some had occupied for 30, 60, 100, and even (in Puthankote) for 150 years. Their admission before you was important, but you do not allude to it, nor explain how such admissions fall in with the views you entertain and I have here endeavoured to meet.

Facts referred to shew subordinate relations.

(True extracts,)

E. A. PRINSEP,

Settlement Commissioner.

THE DRAFT BILL OF SIR W. MUIR, INTENDED TO AMEND ACTS X, OF 1859 AND XIV, OF 1863.

Draft Statement of Objects and Reasons.

The intention of the Bill.

This Bill is intended to amend certain provisions of Acts X., 1859, and XIV., 1863, in the North Western Provinces; and it has been so framed that it may be extended to other Provinces similarly circumstanced, with such variations as difference of tenure or custom may require.

The following are the alterations contemplated:—

The conditions establishing hereditary occupancy.

First.—As regards the conditions necessary to establish the right of hereditary occupancy:

(The passage which follows, in the form in which it was at first drafted, differed from the passage ultimately adopted, and both versions are accordingly here printed in juxtaposition.)

AS FIRST DRAFTED.

It is now generally admitted that the simple condition of twelve years' possession, laid down in Section VI., Act X., 1859, is inadequate. It bears hardly on the landlord, tends to excite antagonism between the ryot and the landlord, and makes it the landlord's object to oust his tenant before a twelve years' title can accrue.

The original nature of tenant right in this country has been fully discussed in the late judgments of the High Court at Fort William.* There is a very general consent that, in the Native state of things, the resident ryot, simply as such, is throughout the Continent of India possessed, as a rule, of a right of hereditary occupancy at the customary rates of the vicinity. This may easily be conceived as the normal condition of the cultivator where there is no proprietary right, properly so called; or where the Zemindars and Village communities possess (as under Native rule) the proprietary right only in their own fields, and of the remainder have merely the right of management. But the question arises whether such a condition is compatible with the system under which we have recognized a proprietary right in the Zemindars over the entire area of their estates, or have conferred it upon strangers. It is true

*Thakoranee Dassee Appellant, vs. Beshe-shar Mookerjee, dated 19th June 1865.

AS ULTIMATELY REVISED.

Much attention has of late been turned to the nature of cultivating rights in the northern Provinces of the Bengal Presidency; and the result would appear to justify the course now proposed of legislating for this part of the country separately from Bengal. In the latter Province, whether from a weaker original title on the part of the Zemindar, or a stronger original title on the part of the ryot, or from the effect of the long operation of our laws, the tenure of the prescriptive cultivator is evidently more independent than in the North West. In some parts of Bengal, indeed, it would appear to resemble that of a sub-proprietor more than of a purely hereditary ryot. In the North West, on the contrary, the late investigations in Oude and in the Punjab indicate a far less vigorous and developed title; and the Reports of the Collectors of the North Western Provinces, made previous to the passing of Act VII., 1822, lately published,* go far to show that the mutual relations of the agricultural community, both proprietary, and non-proprietary, were then very similar to what we now find in Oude.

Under these circumstances, however suitable the occupancy Section of Act X., 1859 may be to Bengal, its pro-

* "Selection from the records of the North Western Provinces."—*Calcutta*, 1866.

that the proprietary right has nowhere been created without the stipulation that all other rights existing by the custom of the country, shall be maintained. Everywhere the subordinate rights in the soil have been strictly guaranteed. But it is conceivable that a right immediately accruing from the simple occupation of land, when that land is claimed by no proprietor, should not accrue, at least so simply and easily, where a proprietary title in the land already vests in another. The change of circumstances would naturally require at any rate a longer and stronger prescription. From the proprietor's point of view, it has been urged that no hereditary title can accrue at all by prescription subsequent to the creation of his property. From the ryot's point of view it is urged that the title of the resident cultivator is one of the subordinate rights which the Govenment has bound itself to maintain as before inviolate. Every shade of opinion exists between these extreme views. The doubt and difficulty surrounding the question has arisen from the natural endeavour of the British Government to combine the benefits of a full proprietary title with the maintenance of the rights of cultivators as customary throughout the country.

In the course of time, this question was answered, but very indefinitely, by enactments recognizing the privilege of hereditary occupancy, as created no longer by simple residence, but by residence of *long* duration. Long residence was held to confer the old hereditary right of the country. But no attempt was made till the passing of Act X., 1859, to define by law what precise length of residence was requisite for the purpose.

visions are in the North West over-stringent, and unreasonably adverse to the proprietor.

In the early Bengal laws the ground taken up was that every resident ryot was, as such, entitled to be maintained in possession at the customary or pergunnah rates. In the course of time the ground of the title was altered, but very indefinitely, by enactments recognizing the privilege of hereditary occupancy, as created no longer by simple residence, but by residence of *long* duration. But no attempt was made, till the passing of Act X., 1859, to define by law the precise length of residence requisite for the purpose.

The first draft of that Act contained a provision which constituted *three* years as the term of prescription for a resident ryot.* The Section was criticised on the one hand as too narrow, because confining the privilege to "resident" ryots; on the other as too wide, because not requiring a longer period to establish the prescriptive right. A general con-

* "Resident ryots cultivating land not previously in their occupancy .... shall not acquire a right of occupancy in such land until rent shall have been paid by them for the same..................... for a period of three years"—*Section 5 of Bill read a first time on 10th October 1857.*

sent of opinion was found to prevail both in the North Western provinces and Bengal that twelve years would be a more appropriate term; and that was accordingly adopted in Section 6 absolutely and without reference to residence.

The unsatisfactory nature of the 12 years prescription.

The conversion of the vague and ill-defined condition of ***Kudeem*** or "long" occupation, into the sharply-drawn prescription of twelve years, is now generally felt, in the light of subsequent experience, to infringe unduly and unnecessarily on the rights of the proprietor, and to be open to objection on other grounds. Even by most of those who hold strongly to the necessity of maintaining unimpaired the customary rights of the agricultural community side by side with the system of proprietary settlements, it is admitted that something more is needed in evidence of the right of occupancy than a mere 12 years' possession.

The test of the new Bill is inheritance and possession for 20 years.

The proposed Bill requires a severer test. To prove an hereditary title the land must have *descended by inheritance* to the present occupant, and the tenure must have existed at least 20 years.

It is conceived that these conditions will impose no real hardship on the ryots. All who, accordingly to the custom of the country, (as it has become modified in practice by our Land Revenue Settlements,) are entitled by any reasonable interpretation of that custom to an hereditary tenure, will fall within the provision; while those liable to ejectment will be cultivators whose recent connection with the land affords no sufficient evidence of anything beyond a purely personal and temporary occupation.

The concession to the Zemindar proposed by the Bill is substantial and valuable. The ryot, to establish his title to occupancy, must have *inherited* the land; and, in addition to this, the land must have been in the family's possession for 20 years, with the presumption ordinarily of a much longer possession. The occasion of a succession forms a new incident when the tenure naturally comes under the review of the landlord; and the fact of an heir being allowed to succeed, without the landlord having interposed to bar the growth of an hereditary title, will (at least for the future, on the stipulations of the law becoming known) sufficiently indicate the landlord's acquiescence in the title.

Section 3 provides that one succession shall be accepted as *primá facie* evidence of possession for the prescribed period, subject to rebutment by direct evidence. It is not unreasonable to admit this presumption in favor of the ryot, whose opportunities for the production of exact evidence are in every way so inferior to those of his landlord. If the tenure have really sprung up within 20 years, the landlord will have no difficulty in proving the fact from his village papers. Words have been introduced in the 1st Section to provide that all entitled to occupancy rights under Section 6 of Act X., 1859, at the time when this Bill may be passed, shall continue so entitled.

The test must be admitted prospectively.

It has been suggested that this last provision, by securing all existing tenures, affords a sufficient protection to the agricultural community; and that there is no obligation on the Government to maintain any test *prospectively* as the measure of a cultivating right. This might be admitted, if, in the first place, we could prepare a complete and exhaustive register of all existing rights under the law; and, in the second,

secure that such register would be so maintained that, after any lapse of years, a ryot could trace his pedigree through the various successions and changes to the corresponding holding in the original charter, and so prove his right. But it may well be admitted that, with an agricultural community so ignorant and indifferent as we find it here, neither of these conditions are likely to be fulfilled. After the lapse of many years the burden thrown on the cultivator to prove that his ancestor did possess a title at a remote time when a certain law was passed would become an impossible one; and the right, proposed now to be only retrospectively conferred, would turn out a merely nominal privilege. It seems, therefore, clear that, in the present state of the country, the test must be admitted prospectively, if it is to offer any real and effective security to the ryot.

Notice of ejectment.

The following minor amendment has been made (Section 4,) in reference to a suggestion by Sir B. Peacock. In modification of Section 19, Act X., 1859, the ryot will be obliged to give notice of intention to relinquish his holding, at least three months before the close of Jeth: and an analogous intimation is required to be given by the Zemindar to any ryot whom he desires to eject. Where occupancy is allowed for an indefinite period, it is reasonable that either party should have timely intimation of the intended change,—the ryot, that he may have opportunity to look out for other fields; the Zemindar, that he may arrange for finding another cultivator.

Provisions regarding ejectment and rent subject to any written contract.

All such provisions are subject to any written contract containing express stipulation contrary thereto,—see Section 8, corresponding to Section 7, Act X., 1859. This Section has been removed to its present position, in order that all the rules regardingthe rates of rent may be made clearly subject to the same proviso. This Section (8) has been objected to by the Bengal Government and Board on the ground that, whenever there is any written contract for a specified period, the right of occupancy should be held presumedly barred. But it is obivious that, if this were the law, it would render ryots altogether suspicious of written agreements; and that the efforts already so difficult, and in great measure unsuccessful, to introduce the system of pottahs and kabooleyuts would entirely fail. No such construction as that referred to by the Bengal Board has been heard of in the North Western Provinces.

"*Para.* 27. Whenever Section 7 of Act X. is amended, it should be done in clearer language than this. There has been, and still is, a good deal of doubt as to the meaning of the law as it now stands, which this proposed Section does not remove. The Board are of opinion that, whenever a landlord and tenant have entered into a written contract *which specifies a term of years*, the right of occupancy should be presumedly barred, though the tenant should be allowed to rebut the presumption. This is the final interpretation of the present law to which the High Court are rapidly tending."

Compensation for improvements to tenants at will.

A Section has been added (5) providing for compensation in favour of cultivators not having the right of occupancy, if ejected from holdings in which they may have effected improvements. This has been already laid down for Oude, and is recommended by the Authorities of the Punjab. By the very considerable lengthening of the prescription proposed in this Bill to establish the right of occupancy, there will be a numerous class of cultivators of long standing, and yet without rights, in respect of whom this Section will be of much consequence. The terms of the Section have been left very wide, in order that the Court may have full discretion as to what it may consider equitable. This is a class of cases in which either arbitration, or the enquiry of a Commission, under Section 180 of the Civil Procedure Code, would be appropriate and useful.

If a cultivating title be saleable the test proposed does not injure it.

Before eaving this head, it may be right to advert to an objection by the Government of Bengal that the test of hereditary occupancy proposed by the Bill would render the rights of cultivators unsaleable. Practically they are so already throughout the North West; in some places they are the subject of mortgage; but although it has been declared* that there is nothing to prevent the growth of a transferable right in the cultivator, no such right has anywhere transpired, excepting perhaps in parts of the Benares Division bordering on Bengal. However, this may be, there is nothing in the Bill which, if a cultivating title were already saleable, would deprive it of that character. The Bill makes inheritance an indispensable incident in an hereditary tenure; but inheritance is also an essential condition of an ordinary proprietary title. To enact that certain incidents are necessary to prove a holding hereditary does not imply that, for other reasons, such holding may not be something more.

* Circular orders of Government and the Sudder Board, dated 17th and 26th September 1856—Appendix 26, "Directions to Revenue Officers."

Enhancement of rent.

Second.—The conditions under which the landlord may claim to enhance the rent of a cultivator with right of occupancy:

(1.)—The first condition corresponds with that in Section 17, Act X., 1859; the rent may be raised to the rate payable by the same class of cultivators for land of a similar description and with similar advantages.

(2.)—The second, following the decision of the Calcutta High Court, provides that the customary rent may be raised in the same ratio as that in which prices may have risen.

(3.)—Where no prevailing rate for similar land held by a similar class of cultivators can be ascertained, and there is also no title proved to hold at any special rate, then the rate paid by tenants-at-will becomes the standard; and rents may be raised to the level of such rate, minus one-eighth or 12½ per cent.

The exact percentage will (if the Bill is favorably received) be a point proper for discussion in Committee. But the principle that the hereditary ryot is entitled to hold at something below a rack-rent appears to be generally admitted. It is true that, in many parts of the country, the market rate is synonymons with the rate by custom; it will be so wherever the demand of the landlord for ryots exceeds the demand by the ryots for land,—in such case the new rule now proposed will be inoperative.

Hereditary tenants entitled to consideration.

But the tendency of our administration is to create a class of tenants-at-will whose rents are raised at discretion on pain of ejectment. Rent here, in so far as there may be local demand for cultivating holdings, becomes strictly rent by competition. If, under such circumstances, the market rate were adopted as the standard for all tenants, then the fixed and permanent character of the hereditary tenure, implying some small margin of beneficial interest such as will attach the ryot to his holding for better or for worse, would vanish. The landlord can by law issue notices of enhancement at discretion; and he would only have to produce offers from other quarters of an equal rent, stimulated possibly by accidental or temporary causes, to justify his enhancement. The course of legislation in favor of hereditary ryots is naturally held to imply some protection more effectual

than this. It has been generally admitted by experienced authorities that something must be conceded, by equity and the custom of the country, to the hereditary ryot, something that shall keep his rent at an equable and average rate behind the varying and uncertain market rate of the day.

The rate proposed.

The proposed rule aims at accomplishing this object. By it the landlord will be able to raise the hereditary tenant's rent to the prevailing rack-rent of the day, minus 12½ per cent., allowing him, that is, a discount of two annas on the Rupee.

Certain discretion allowed to the Courts.

In the first proviso, at the recommendation of the Lieutenant Governor, Punjab, a discretion has been left to the Court to diminish or increase this deduction should it find fair and equitable grounds for such deviation. For example, custom might assign to a special class of cultivator a certain degree of consideration over another class of hereditary cultivator, or by long prescription one cultivator may have held invariably at lower rates than another; and in the opinion of the Court an equitable title to hold at a lower proportion than the other might be established. To decide such a point, the Court would always be able to employ arbitration or the services of an experienced Commissioner.

It will be observed that "case third" in itself pre-supposes that the cultivator has been holding at a rent lower than the standard proposed. Such lower rent would, from the very fact of its having previously obtained, be held under the present law (Act X., 1859, Section 5,) a fair and equitable rent, "unless the contrary were shown." And it would, as the law now stands, hardly be possible for the landlord to prove the contrary,—there being no existing standard of fairness, beyond the prevailing rent of a similar class, which, by assumption, does not exist in the supposed case. The rule, then, is altogether in favor of the landlord, while it appears to afford every reasonable and equitable protection to the ryot.

Existing rents not open to abatement.

It may also be noted that the rule gives no ground for the ryot to *claim abatement*, supposing his rent to be above the standard. Existing rents, if they exceed that standard, must be held to have been consented to by the ryot, and not to be open to question in our Courts. Hence it is proposed (Section 12) to cancel the provision in Act XIV., 1863, allowing claims for abatement ;—a provision which was passed for the North Western Provinces against the opinion of the Sudder Board of Revenue.

The general tendency of rent (excepting temporarily on account of drought, depopulation, &c.,) is to rise. Had it been otherwise, some stipulation enabling hereditary cultivators to claim abatement to the market rate of the day might have been expedient.

The three standards of equitable rates.

To resume, under the law, as it is proposed to modify it, there will be three standards of equitable rates, one or other of which can be applied by the landlord according to the position of the ryot—

First.—If the ryot belongs to a class which (whether from former proprietary title, or right of management, ancient possession, special agreement, or otherwise) is admitted to possess a title to hold at special rates, the landlord may sue to raise the rent of any individual paying less to the level of such rates.

Second.—He may raise the rent of any cultivator in proportion to rise in the price of agricultural produce.

Third.—Where no special class rate is shown, and no personal privilege is proved, he may raise the rent of any hereditary cultivator to the market rate, *i. e.*, the rate of common tenants-at-will, minus 12½ per cent., or such other deduction as the Court may deem equitable.

Improvement of the land effected by the tenant.

"Case fourth" contemplates the contigency of the produce or productive power of the land having been increased. An important alteration in principle is here proposed.

In Act X., 1859, Section 17, the power of enhancement is restricted to cases in which the increase has been brought about "otherwise than by the agency or the expense of the ryot." Accordingly the ryot is, under that Section, entitled to the whole benefit of increase brought about by himself; and there could, in that event, be no enhancement at all. The Lieutenant Governor, Punjab, has strongly objected to this provision, and upon reasonable premises—*First* on the ground of right, as proprietor of the land, the landlord has an equitable title to share in its improvement, though not to the same extent as where the improvement is owing to his own expenditure; *second*, on the ground of expediency, the landlord has ordinarily the power to interpose and check any work that would alter, even for improvement, the state of the land; on the other hand, he has the power of encouraging and facilitating improvements. If he is not to share at all in any increased value of the holding, he will be set against improvements, or at the least he will be indifferent. For the progress of the country, it is highly important to enlist his interests on the side of improvement, and this can only be done by allowing him to share in the benefits of the improvement.

The interests of the cultivator are secured by the general proviso which follows "case fifth;" It is there provided that, wherever improvements are effected, wholly or in part, by the cultivator, or at his expense, the Court shall make such abatement in the enhancement otherwise assessable as shall appear equitable. I see no better way than to leave the decision of the amount to the discretion of the Court, which, when expedient, will aid itself by arbitration or commission.

Improvement effected without action of the tenant.

Leaving, then, the case of improvements effected by the cultivator to be protected by the above proviso, "case fourth" proceeds on the assumption that the improvement having been brought about (as by the sinking of a well, or the introduction of canal irrigation) by no labour or expenditure of the cultivator, he has no right to a greater surplus or profit than he enjoyed before. The rule of proportion will not hold here; for it is not the money value of the same corn rent that is in question, but the value of a longer corn rent. The rule, therefore, lays down that the rent is to be increased in the whole value of the increased produce, less deduction to cover increased cost, labour, and responsibility. This is the principle; but wherever rents of other similar lands in the vicinity have themselves become adjusted to the increased productiveness, cases one and three will apply; and to follow rates already so adjusted will be simpler and more satisfactory. An investigation into the value of the increased produce will only be necessary where no such adjustment is found to have taken place.

Increase of area.

"Case fifth," where the area has increased, or is proved to be greater in extent than the quantity for which rent has already been paid, is comparatively simple; the surplus land will be-

assessed at the same rate as the rest of the holding, or if it appears more equitable under cases one or three.

No fresh suit for enhancement for 10 years.

Section 7 provides that; after a decision fixing the rent of a cultivator with right of occuppancy, no fresh suit will lie under cases one, two and three, until the expiration of ten years. Something of this kind is required to give fixity to the tenant's interests, excepting where there may be accession of land or new conditions of increased productiveness.

A rent free title not necessarily to be considered an indefeasible right.

Passing now to the other provisions of the Bill,—Section 9 modifies Section 28, Act X. of 1859. By the present law a rent-free title enjoyed for 12 years grows up into an indefeasible right. This is quite proper (as against the proprietor, but not as against Government) where the land is held by an absolute grant from the proprietor. But throughout the country lands are constantly assigned to Brahmins, servants, retainers, &c., on the understanding that they are resumable, or that some service or duty in return is to be performed. The rent-free holder is thus generally in the position of a retainer, swelling on proper occasions the retinue of the proprietor, and adding to his dignity. By the present law, after holding for 12 years, these become absolute proprietors free of rent, and not responsible even for revenue except in case of sale for arrears. It is proposed to modifiy this Section, and to provide that *on every succession*, the new proprietor may sue to resume a holding so released by any predecessor. But the rent-free holder will be able to resist the suit by proving that the rent-free title was conferred upon him absolutely, in which case the 12 year's prescription would hold good without reference to succession in the proprietorship; and generally a rent-free possession of 50 years and two successions will constitute against the proprietor a rent-free title. But any such holding, unless exempted by the Government, will not be free from its liability to Land Revenue.

The Civil Code to be the rule of procedure.

Section 22 provides that the Civil Code for the time being in force shall, as far as applicable, be the rule of procedure in cases connected with rent. In the revised Bill of Civil Procedure, as amended in Committee, this has been provided for by an indication of the Section to be applied to the Revenue Courts.

Appeals.

Sections 23 to 33 refer to appeals. There has been some doubt and variety of practice in this Department. Certain classes of orders are appealable to the Revenue Commissioner, while other orders and all judgments are appealable to the Civil Judge. It will be more uniform and convenient to make the appeal lie in all cases to the Civil Courts, excepting the class of orders belonging to Section 25, 26 and 27 of Act X., 1859, in which the Collector acts administratively and not judicially. The provisions now proposed, at the instance of the Allahabad Board, will, besides removing doubts, be a material improvement in the law.

Suits for profits to be under jurisdiction of Civil and Revenue Courts.

Sections 12 to 21 contain amendments of Act XIV., 1863,—a law which relates only to the North Western Provinces. That law made suits for profits, and settlement of accounts between landed co-sharers to be cognizable exclusively by the Collector. It is admitted that, in all ordinary disputes simply as to share of profits, the Collector is, in the North Western Provinces, the authority best qualified

to decide. But it is obvious that such suits must often be connected with, and dependent on, questions of contested right in the property itself. Where such questions are involved, the case would be far more effectively investigated in the Civil Court. As the law now stands, the title to the property itself would be cognizable by the Civil Court and that for profits, dependent on the title, exclusively by the Collector.

With the view, therefore, of avoiding conflicting decisions, and also of relieving the Collector of the trial of suits entangled with questions of right, it is proposed to remove the restriction which gives him exclusive jurisdiction in suits for profits. The collector will thus be at liberty to refer suitors preferring such claims to the Civil Courts; and these Courts will have power to remove cases of this kind from the Collector's Court to their own, whenever suits involving the same issues may already have been laid in the latter.

Rent paid in kind and its commutation to cash rent.

Sections 12 and 14 relate to the practice of rent paid in kind. In suggesting these provisions, the Sudder Board of Revenue at Allahabad made the following observations:—

"The system of rents in kind or by appraisement of crops, though suited to a rudimental state of society, is accompanied by many evils, which in the progress of civilization, render it a matter of high expediency to promote the substitution of money rents. The division of crops is a source of frequent quarrelling and dissention; it places the cultivator often at the mercy of an unscrupulous landlord, or the landlord at the mercy of turbulent cultivators; it represses independent action by the necessity of frequent interference on the part of Government officials to compose disputes; and generally by not rendering the cultivator the sole recipient of the fruits of his labor, subject to the payment of a known and fixed rent, it diminishes the incentives to industry and improvement, and has a depressing influence on agriculture.

"Besides these general considerations which are continually in operation (and which induced the Board, under the old Summary Suit Law, to direct the entertainment of applications for commutation at the instance of either party), there are special causes sometimes at work which render it necessary that the authority to enforce commutation should be vested somewhere. Such a cause is the introduction of canal irrigation, which, by rendering the produce of the soil certain, and affording permanent facilities for the higher kinds of crop, forms an equitable ground on which the Zemindar may claim an enhanced rent, to be paid in money,—in substitution of his present title to a share in any common crop which a careless cultivator may prefer to grow. So in tracts of country bordering upon jungles, where the system of payment in kind was originally followed in consequence of the uncertainty of the returns one year with another, in the progress of the country and advance of cultivation this reason may no longer exist, and there should be the power somewhere vested to hear the claim of either party for substituting money rents in lieu of this primitive practice.

"The Board are accordingly of opinion that (as proposed by them in bringing forward the draft of Section 13, Act XIV., 1863,) the power of trying claims for commutation, and adjusting money rents at a fair and equitable sum, and granting pottahs accordingly, under Section 5, Act X. of 1859, should be permanently vested in the Collector's Court.

"A discretionary power of refusing the application, wherever the crops are shown by the objector to be liable from special cause (as vicinity to jungles, prevalence of wild beasts, &c.,) to much uncertainty, should be reserved to the Collector."

The Government of India raised a question as to the propriety of granting this power under all circumstances. It is admitted that the measure, however important, must not be urged prematurely, and its operation must be carefully watched. In the Section as now drawn, a full discretionary power has been reserved to Government, both in respect of the districts to which the operation may extend, the Officers to be invested with authority for the purpose, and principles on which they are to proceed.

The division, estimate and appraisement of crops.

Sections 14 and 15 have been added to provide for the numerous classes of disputes that arise between landlord and tenant as to the division, estimate, and appraisement of crops, where rent is taken in kind or its equivalent. The Zemindar can harass his tenant by neglecting to be present, by thus preventing the crop being cut to the injury of the tenant, and by bringing exorbitant claims afterwards for his alleged share. The tenant can similarly harass the landlord by refusing to come to terms, and in the absence of a legal referee may often baffle him successfully. Provision has been made for an authoritative settlement in such cases.

The application of the proposed law.

The provisions of the new law would extend (in like manner as those of Acts X. of 1859 and XIV. of 1863,) to the Regulation Districts of Bengal andto the North-Western Provinces. They would probably be also applicable to the Punjab and the Central Provinces. In respect of other parts of the country, the Bill empowers the Governor General in Council and the Local Government to extend the Rent Law thus amended to any territory under their administration ; but it is left open to them to modify any portion of Sections 6 and 7, Act X., 1850, (relating to the conditions for establishing an hereditary right of occupancy, and of enhancing rents), which may be found to conflict with the rights of proprietors as already declared, or with the local custom of the country. To admit of full and timely objection being urged against such extension of the law, previous notice is required to be published in the Gazette for three months.

Should this Bill be favorably entertained, it may be expedient to alter its form by consolidating it with the Laws which it amends in one Act. This can be done, if necessary, in Committee.

W. MUIR.

The 10th July, 1865.

A Bill to amend Acts X. of 1859, and XIV. of 1863.

Preamble.

WHEREAS it is expedient to amend certain provisions contained in act X. of 1859, and Act XIV. of 1863; it is hereby enacted as follows :—

Repeal of certain Sections.

1. Sections 6, 7 and 19 of Act X. of 1859 are repealed, provided that nothing in this Section shall affect the title of any Cultivator having at the time of the passing of this Act the right of occupancy as declared in Section 6 of the aforesaid Act.

Right of occupancy of tenant cultivating or holding inherited land.

2. Every ryot, cultivating or holding land which has descended to him by inheritance, has a right of occupancy in the land so cultivated or held by him, whether it be held under pottah or not, so long as he pays the rent payable on account of the same; provided that the possession, either by himself, or by some other person or persons from whom he has inherited, shall have lasted continuously for not less than *twenty* years. Where a cultivator having the right of occupancy shall, with the consent of the proprietor, have exchanged any land in respect to which such right exists for any other land belonging to the same proprietor, such varied occupancy shall be held to be continuous occupancy. Provided also that this Section shall not apply to khomar, neejjote, or seer land let by the proprietor on lease for a term, or year by year, nor (as respects the actual cultivator) to land sub-let for a term, or year by year, by a ryot having a right of occupancy.

One succession to be evidence of possession for the period required.

3. One succession shall be accepted as evidence of possession for the period mentioned in Section 2, unless the contrary be shown.

Ryot may relinquish land held or cultivated by him on certain conditions.

4. Any ryot who desires to relinquish the land held or cultivated by him, shall be at liberty to do so at the close of the month of Jeth, provided he gives notice of his intention in writing not less than three months before the close of the said month of Jeth, to the person entitled to the rent of the land or his authorized agent. If he fail to give such notice, and the land is not let to any other person, he shall continue liable for the rent of the land. Provided that if notice of enhancement under Section 13, Act X., 1859, shall have been served on any ryot, he may, within fifteen days of receiving the notice, signify in writing his intention to relinquish his holding, and such intimation shall be held to be a notice under this Section, even if it be served within three months of the close of Jeth.

Any proprietor who desires to eject a tenant not having the right of occupancy, shall be at liberty to do so at the close of the month of Jeth; provided he gives notice of his intention to such tenant, not less than three months before the close of the said month of Jeth.

Notices under this Section shall be issued within the year at the close of which they are intended to have effect. If the person on whom such notice is served, refuse to receive it, and to sign a receipt for the same, the party issuing the notice may make application on plain paper to Collector, who shall there-

upon cause the notice to be served in the manner provided in Section 13 of Act X. of 1859.

5. * * * Whenever a tenant, not holding from year to year, or by virtue solely of a terminable lease, may be ousted from his holding, otherwise than for an arrear of rent or for other cause being in contravention of the terms of his lease, the Court shall award him such sum in compensation for any improvements to his holding as shall to the Court appear fair and equitable.

Amendment of Section 17, Act X. of 1859.

6. Section 17, Act X. of 1859, shall be read as follows:—

"No cultivator having an hereditary right of occupancy, shall be liable to an enhancement of the rent previously paid by him, except on some one of the following grounds, namely:—

"CASE FIRST.—That the rate of rent paid by such cultivator is below the prevailing rate payable by the same class of cultivators for land of a similar description and with similar advantages in the places adjacent.

Rule.—In this case the Court will enhance the rent of such cultivator to the full rate so prevailing.

"CASE SECOND.—That the rent of such cultivator has remained without enhancement from a period since which the money value of agricultural produce in the vicinity has risen, or has been enhanced in a proportion less than the rise of such money value, or otherwise than in consequence of such rise.

Explanation.—This case shall apply only where it may appear to the Court that the rents of similar lands belonging to similar classes of ryots in the neighbourhood have not adjusted themselves to the increased money value of the produce.

Rule.—Where this case applies, the Court will enhance the rent according to the method of proportion, that is, the increased rent will bear to the previous rent the same proportion, as the existing money value of agricultural produce bears to the money value of such produce at some previous period, since which the rent has not been enhanced.

"In determining present or former standards of price, the Court shall if possible, take the average of the prices for periods of not less than five years.

"It shall be competent to the Local Government to frame instructions for the ascertainment of the money value of agricultural produce for the purposes of this Rule, and to publish standards of local prices, former and present, for the assistance of the Courts in carrying out this Rule.

"CASE THIRD.—That the rent paid by such cultivators is more than [12½] per cent. lower than the average rent of land of a similar description and with similar advantages in the places adjacent, paid by cultivators not having the right of occupancy.

"*Explanation.*—Where no prevailing rate may be ascertainable under Case I., or where no personal title is proved to hold at a special rate, and the present rent is not shown to be fair and equitable, the rate of rent paid for similar land by cultivators not having a right of occupancy, minus 12½ per cent., shall be held to be a fair and equitable rate under Section 5, Act X., 1859, provided such rate is not below the rent actually paid.

Rule.—In this case the Court shall decree an enhancement, such as will raise the rent to the level of the rent assessable at the rates paid by cultivators not having the right of occupancy for land of a similar description and with similar advantages in the places adjacent, minus 12 ½ per cent.

Proviso 1st.— Provided that the Court may increase or diminish the deduction aforesaid, when any special claims on the part either of the landlord or the cultivator, or any thing in the customs and usages of the neighbourhood shall, in the opinion of the Court, render such deviation from the rule fair and equitable.

"*Proviso 2nd.*—Provided that the rent of no cultivator entitled to hold at a fixed rent, or rate or at any rate more favorable than that laid down in the foregoing rule, shall be liable to be enhanced above such rent or rate.

"CASE FOURTH.—That the produce or productive power of the land has been increased.

"*Rule.*—In this case, claims for enhancement may be adjusted in either of the following ways :—

"(*a.*) By the rules under Case I. or under Case III. (as the case may be), wherever it may appear that the rent of land in the vicinity of a similar description, and possessing similar advantages, has generally adjusted itself with a due reference to such advantages.

"(*b.*) Where no such general adjustment is found to have taken place, or where it may not be possible to declare rates under Cases I. and III., the Court shall enhance the rent by the whole value of the increased produce, or of the fairly estimated result of the increased productive power, after deducting such amount in consideration of the increased responsibilities, expense, or labor of the cultivator, as may appear to the Court equitable.

"CASE FIFTH.—That the quantity of land held by the cultivator has been proved by measurement to be greater than the quantity for which rent has been previously paid by him.

"*Rule.*—In this case the Court shall decree rent for the surplus land calculated at the same rates as those paid for the rest of the holding; or if so claimed by the plaintiff, at rates to be fixed by the Rules under Case I. or Case III., foregoing.

"*General Proviso.*—Where the value of the land has been increased by reason of improvements effected, wholly or in part by the Agency of the cultivator, or at his expense, the Court shall make such abatement in the rate of enhancement otherwise assessable on such cultivator as shall appear to the Court fair and equitable.

"The words 'places adjacent' in this Section may be taken to signify such extent of country in the vicinity as, in the judgment of the Court, may reasonably be included in the investigation for the purpose of ascertaining the prevailing standard of rent."

7. After a decision passed under the provisions of this Act fixing an enhanced rent, or a fair and equitable rent, no suit shall lie for enhancement of the same, until the expiration of ten years from the date of such decision, excepting under Cases IV. and V.

Foregoing Sections not to affect written contracts for cultivation of land.

8. Nothing contained in the foregoing Sections shall be held to affect the terms of any written contract for the cultivation of land entered into between a landholder and a ryot when it contains any express stipulation contrary thereto.

Amendment of Clauses 5 and 6 of Section 23, Act X. of 1859.

9. Clauses 5 and 6, Section 23, Act X. of 1859, shall be read as follows:—

"5. All suits to eject any ryot or to cancel any lease on account, of the non-payment of arrears of rent, or on account of a breach of the conditions of any contract by which a ryot may be liable to ejectment, or a lease may be liable to be cancelled *or on account of the cultivator being a tenant-at-will.*

"6. All suits to recover the occupancy or possession of any land, farm, or tenure, from which a ryot, farmer or tenant has been illegally ejected by the person entitled to receive rent for the same, *and to recover damages on account of such illegal ejectment.*"

Amendment of Section 28, Act X. 1859.

10. Section 28, Act X. of 1359, shall be read as follows:—

Applications to dispossess grantees of land exempt from revenue.

"28. So much of Section 10, Regulation XIX. 1793; Section 10 Regulation XLI. 1795; Section 6, Regulation XXXI. 1803; Section 21, Regulation VIII. 1805, and Section 24, Regulation XII. 1805, as authorizes and requires proprietors and farmers of estates and dependent talooks, in cases in which grants for holding land exempt from the payment of revenue have been made subsequent to the dates specified in the said Sections, of their own authority to collect the rent of such land, and to dispossess the grantees of the proprietary right in the land, and to re-annex it to the estate or talook in which it may be situate, is repealed; and any proprietor or farmer who may desire to assess any such land, or to dispossess any such grantee, shall make application to the Collector, and such application shall be dealt with as a suit under the provisions of this Act. Every such suit shall be instituted within the period of twelve years, from the time when the title of the person claiming the right to assess the land or dispossess the grantee first accrued. Provided that the title of a proprietor to assess such land shall be held to accrue from the date on which he succeeded to the proprietary right by inheritence, unless the grantee shall produce a written deed of grant, specifically covenanting that the grant

shall never be resumed by the grantor or his representatives, or shall be resumed only upon some contingency or condition which has not taken place; provided further that rent-free possession for fifty years, including two successions, shall vest in the grantee or his representative a proprietary right in the land so held. But no length of rent-free occupancy, nor any grant made by the proprietor, shall release such land from its liability to Government for the revenue assessable on the same."

Procedure in suits under preceding Section.

11. Suits under the last preceding Section shall be subject to the same procedure, both in their trial and in appeal, as other regular suits under this Act.

Amendment of Clause 14, Section 1, Act XIV. of 1859.

12. Clause 14, Section I, Act XIV. of 1859, shall be read without the words, "or of some persons under whom he claims."

Modification of Section 3, Act XIV. of 1863.

13. In modification of Section 3, Act XIV., 1863, it is hereby declared that no claim for abatement of rent, on the ground that the rate hitherto paid is higher than that paid by other cultivators, shall be heard, excepting by Officers employed in making or revising a Settlement of Land Revenue.

Power to declare provisions of Section 13, Act XIV. of 1863, to be applicable to any district or part of a district.

Also what Officer shall hear and decide cases.

14. It shall be competent to the Local Government, by a Notification to be published in the *Official Gazette* of such Government, to declare the provisions of Section 13, Act XIV., 1863 (for the commutation of rents in kind to fixed payment) applicable to any district, or portion of a district, whether under Settlement or not, and to declare what Officers are empowered to hear and decide cases under that Section, and otherwise to lay down rules determining the circumstances under which such suits may be heard or refused, and the principles to be followed in their adjudication.

Division and appraisement of produce taken in kind in lieu of rent.

15. Wherever rent is taken by division of the produce in kind, or by estimate, or appraisement of the standing crop, or other procedure of a similar nature requiring the presence both of the cultivator and proprietor either personally or by a representative, if the proprietor shall neglect to attend at the proper period, the cultivator may apply to the Tehseeldar, who may thereupon issue notice to the proprietor to attend within a certain period; and failing his appearance within the period so fixed, the cultivator may proceed to divide, estimate or appraise the crop in the presence of two witnesses, or (as provided in the following Section) he may call in a Government Officer to make the division, estimate, or appraisement.

Settlement of dispute regarding division or appraisement of such produce.

Whenever rent is taken in the manner mentioned in the foregoing Section, and a dispute regarding the Division, estimate or appraisement, is alleged in a petition of plaint by either of the parties concerned, the Collector, or other Officer authorized to try cases under Act X. of 1859, may depute an Officer of his establishment before whom the division, estimate, or appraisement shall be made; and the decision of such Officer, subject to the orders of the Collector, or to the issue of a suit filed under Act X., 1859, shall be authoritative and final.

Amendment of Clauses of Section 1, Act XIV. of 1863.

17. The Clauses of Section 1, Act XIV. of 1863, shall be read as follows :—

First.—" Suits by Lumberdars for arrears of Government Revenue payable through them by the co-sharers whom they represent, and for village expenses and other dues for which the co-sharers may be responsible to the Lumberdars.

Second.—" Suits by co-sharers for their share of the profits of an estate, or any part thereof, after payment of the Government Revenue and village expenses, or for a settlement of accounts.

Third.—" Suits by Maâfeedars or Assignees of Government Revenue for arrears of Revenue owing to them as such Maâfeedars or Assignees.

Fourth.—" Suits by Talookdars and other superior proprietors for arrears of revenue or otherwise (not being rent claimable under Section 23 of the said Act X. of 1859) due to them as such Talookdars or other superior proprietors.

Fifth.—" Suits for damages on account of the illegal exaction of revenue, or of any unauthorized cess or impost, or on account of the refusal of receipts for revenue paid or tendered. Such suits may be brought by co-sharers against their Lumberdars, by Zemindars or Lessees against Maâfeedars or Assignees of Government Revenue, and by inferior proprietors against Talookdars or other superior proprietors."

Suits under Class II. Section 1, Act XIV. of 1863, may be heard as ordinary suits in Civil Courts.

18. Suits under Class II., Section 1, Act XIV., 1863 [suits for profits, or for a settlement of accounts] shall not be exclusively cognizable in the Court of the Collectors of Land Revenue ; but may be heard as ordinary suits in a Civil Court.

Officers acting under said Section may stay proceedings, and refer suitors to Civil Court.

19. It shall be competent to a Collector or other Officer acting under the aforesaid Section, to stay further proceedings in any such suit, and to refer the suitors to the Civil Court.

Civil Court in which an original suit is laid under Section 19, may call for record of proceedings in any Revenue Court in which another suit is pending involving points at issue in the case.

20. Whenever an original suit of the nature specified in Section 19 shall be paid in any Civil Court, and it shall be brought to the notice of the Court that a suit involving any of the points at issue is depending under Section 1, Act XIV, of 1863, in any Revenue Court, the Civil Court aforesaid shall thereupon issue a precept to the Collector, desiring him to stay further proceedings, and to forward to such Court the record of any proceedings, already held in the case.

Rule of limitation in Section 37, Act X. of 1859, declared in force.

21. The rule of limitation contained in Section 37, Act X. of 1859 is hereby declared to be in force, any other law notwithstanding.

22. The provisions of Act VIII., 1859, or other law of Civil Procedure for the time being, shall be applicable to suits under Acts X. of 1859 and XIV. of 1863, and to suits brought under this Act, in so far as such provisions may not be inconsistent with the provisions of those Acts.

Civil Procedure law in force to apply to suits under Acts X. of 1859 and XIV, of 1863,

23. In suits instituted in the Courts of Collectors and Deputy Collectors under this Act or under Acts X. of 1859 and XIV. of 1863, for the recovery of arrears of Revenue or rent of land paying Revenue to Government or to an Assignee of the Government Revenue, or for the recovery of money in the hands of an Agent of such land, and in suits instituted by co-sharers for recovery of their share of profits under Clause 2, Section 1, Act XIV. of 1863, the statement of claim shall be written on paper bearing a stamp of one-fourth of the value prescribed for suits instituted in the Civil Courts, and in all other suits instituted in the Courts of Collectors and Deputy Collectors under the said Acts, the statement of claim shall be written on paper bearing a stamp of eight annas, anything in Note (G.), Article 11, Schedule (B.), Act X. of 1862, notwithstanding.

Stamps for statements of claims in suits instituted in Courts of Collectors or Deputy Collectors, under Acts X. of 1859. XIV. of 1863, or this Act.

24. Sections 151 to 161 of Act X. of 1859 are repealed.

Sections repealed.

25. In the performance of their duties under Acts X. of 1859 and XIV. of 1863, and under this Act, the Collectors and Deputy Collectors shall be subject to the general direction and control of the Commissioners and the Boards of Revenue; and the Deputy Collectors shall be subject to the direction and control of the Collectors to whom they are subordinate.

Direction and control of Collectors and Deputy Collectors in acting under Acts X. of 1859 and XIV. of 1863.

26. All orders and judgments passed by a Deputy Collector under Act X. of 1859, or Act XIV. of 1863, and under this Act, not being orders passed in the course of suits, or in the course of enquiries on applications under Sections 25, 26, or 27 of Act X. of 1859, and relating to the trial thereof, provided the value of the claim, estimated according to any law for the time being in force for the valuation of suits, do not exceed Rupees one hundred, shall be appealable to the Collector. The petition of appeal shall be written on a stamp paper of eight annas value, and shall be presented to the Collector within fifteen days from the date of the decree or order, provided that such time as may be requisite for procuring a copy of the decree or order appealed against, shall not be reckoned as part of the fifteen days.

Appeal from orders of Deputy Collectors under said Acts.

27. The Collector shall fix a day for hearing the appeal, and shall cause notice of the same to be served on the respondent in the manner hereinbefore prescribed for the service of summons. If on the day fixed for hearing the appeal, or any other day to which the hearing may be adjourned, the appellant shall not appear in person or by an Agent, the appeal shall be dismissed for default. If the appellant shall appear, and respondent shall not appear in person or by an Agent, the appeal shall be heard *exparte*.

Procedure in appeal.

28. If an appeal be dismissed for default of prosecution, the appellant may, within fifteen days from the date of the dismissal, apply to the Collector for the re-admission of the appeal; and if it shall be proved to the satisfaction of the Collector that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Collector may re-admit the appeal.

Re-admission of appeal.

29. After hearing the appeal, the collector shall give judgment in a manner hereinbefore prescribed for giving judgment in original suits, and the judgment of the Collector shall be final, subject to a special appeal to the High Court.

Judgment in appeal.

30. All such orders or judgments as are above described in Section 26, when passed in the first instance by the Collector, shall be final; subject to a special appeal to the High Court; but it shall be competent to the Board of Revenue to call for any case in which the order of a Collector, either original or in appeal, is final, and to pass such orders thereon as they may think proper.

31. In suits in which the judgment of the Collector is final as provided in the last preceding Section, the Collector may, upon the application of either party, if preferred within thirty days from date of the decision, order the re-hearing of a suit, upon the ground of the discovery of new evidence or matter material to the issue which the applicant had no knowledge of, or could not produce at the time of trial.

Grant of re-hearing upon discovery of new evidence, &c.

32. All orders and judgments passed by a Collector or a Deputy Collector under Act X. of 1859, or Act, XIV. of 1863, and under this Act, not being orders passed in the course of suits or in the course of inquiries on applications under Sections 25, 26, or 27 of Act X. of 1859, and relating to the trial thereof, provided the claim, estimated according to any law for the time being in force for the valuation of suits, exceed Rupees one hundred, and do not exceed Rupees five thousand, shall be appealable to the Zillah Judge. If the amount or value in dispute exceed Rupees five thousand, the appeal shall lie to the High Court.

Appeal from orders of Collector or Deputy Collector, under Acts X. of 1859, XIV. of 1863, or this Act.

33. The petition of appeal to the Zillah Judge or High Court shall be written on the stamp paper prescribed for appeals from the subordinate Civil Courts, with reference to the amount or value of the property involved in the appeal; and the Rules in force in regard to the time within which appeals from the decisions of such Courts may be received, and to the manner in which such appeals are heard and determined, and to all proceedings which may be had in respect of such appeals, shall be applicable to appeals to the Zillah Judge or High Court under this Act.

Stamp on petition of appeal to Zillah Judge or High Court.

34. The Governor General in Council, after three months' notice to be published in the *Official Gazette*, may extend the provisions of Acts X. of 1859 and XIV. 1863, and of this Act, to any part of the territories under the direct control of the Government of India; and the Governments of Bengal, of the North-Western Provinces, and the Punjab, after similar notice, may extend the same provisions to any part of the territories within their jurisdiction to which they do not al-

Power to Governor General in Council and Lieutenant Governors of the North-Western Provinces and the Punjab, to extend Acts X. of 1859, XIV. of 1863, and this Act.

ready extend. In so doing, the Governor General in Council and such Local Governments shall be competent, by a notice to be published in the *Official Gazette*, to modify any portion of Sections 6 and 17, Act *X*., 1859, which may conflict with the relative rights of proprietors and cultivators, as already declared by Government, or with the custom of the part of the country to which the afore-mentioned provisions may be extended.

[illegible] the Revenue [illegible] N.-W. P. [illegible]

[illegible]

[illegible] Commissioner [illegible]

[illegible]

THE Governor General has perused the papers, marginally noted, on the subject of the enquiry into occupancy-rights and the relations found to exist between landlord and tenant classes in the Panjab. He has, in concert with Mr. [illegible], his Secretary in the Foreign Department, who has till lately been the representative Chief of the Revenue Department in the North-Western Provinces, and with Mr. [illegible], Settlement Commissioner, taken into consideration the questions that have arisen out of these enquiries.

[illegible]

2. The Governor General, while wishing to abstain from any action that might be considered to fetter the Local Government, is still anxious to see these questions brought to an early and final issue; and, believing that an expression of his opinion may help to accomplish this result, he has thought fit to record his views in the following terms.

[illegible]

3. Taking into consideration that, in times anterior to British rule in the Panjab, there was no certain custom, there was no difference between rent and revenue, that the land-revenue [illegible] without regard to superior or inferior classes; and that this led to the absence of all absolute rights of property in the soil [illegible] the introduction of British Government [illegible] settlement, and [illegible] it is only [illegible] to give due weight to such circumstances in discussing the questions now raised.

4. Inasmuch, then, as certain tenants were recorded at the [illegible] independent and occupancy-rights, the Governor General is of opinion it would be inexpedient to allow Revenue Officers conducting the revised settlements in this province, to make any great or radical change in the status of such tenants who were recorded as having a right of occupancy.

[illegible]

5. At the same time if it is discovered that great or numerous mistakes were made in deciding the rights of such cultivators, and that great injustice has arisen in consequence, the Governor General is quite ready to extend to such cases that [illegible]

[illegible]

Notes by His Excellency the Viceroy, the Hon'ble W. MUIR, *the Hon'ble Colonel* H. M. DURAND, C. B., *the Hon'ble* W. GREY, *the Hon'ble* H. S. MAINE, *the Hon'ble* W. N. MASSEY, *His Excellency the Commander-in-Chief and the Hon'ble* G. N. TAYLOR.

(1.) Part I. Report of Proceedings of Lahore Tenant Committee.
(2) Part II. Further Papers and Reports.
(3.) Extract (paras. 64 to 101) from Annual Report of Settlement Commissioner on operations of the year 1865 66.

THE Governor General has perused the papers, marginally detailed, on the subject of the enquiry into occupancy-rights, and the relations found to exist between Landlord and Tenant classes in the Punjab. He has, in concert with Mr. Muir, his Secretary in the Foreign Department, who has, till lately, been the representative Chief of the Revenue Department in the North-Western Provinces, and with Mr. Prinsep, Settlement Commissioner, taken into due consideration the questions that have arisen out of these enquiries.

H. E. anxious for the settlement of the question.

2. The Governor General, while wishing to abstain from any action that might be considered to fetter the Local Government, is still anxious to see these questions brought to an early and final issue; and, believing that an expression of his opinion may help to accomplish this result, he has thought fit to record his views in the following terms.

No certain custom in Sikh days.

3. Taking into consideration that, in times anterior to British rule in the Punjab, there was no certain custom; there was no difference between rent and revenue; that the land revenue was taken from all alike without regard to superior or inferior classes; and that this led to the absence of all absolute rights of property in the soil, it was found politic to extend the protection of British Government at the annexation to all classes alike; and as this policy was carried out in the last settlement, and 16 or 17 years of British rule have since intervened, it is obviously important to give due weight to such circumstances in discussing the question now raised.

Inexpedient to materially alter the status affirmed at last settlement.

4. Inasmuch, then, as certain rights were accorded to the cultivators of long residence and occupancy at last settlement, the Governor General is of opinion it would be inexpedient to allow Revenue Officers, conducting the revised settlements in this province, to make any great or radical change in the status of such tenants who were recorded as having a right of occupancy.

Redress of grievances should however be made.

5. At the same time if it is discovered that great or numerous mistakes were made in defining the rights of such cultivators, and discontent has arisen in consequence, the Governor General is quite ready to extend to such cases that amount

NOTE.—This Minute of the Viceroy's was written before receipt of Lieutenant Governor's Minute of 15th September 1866, all the other Minutes were written subsequently thereto.

of consideration which shall remove the evil and redress the injury sustained by the proprietary classes, provided that any redress now given is given in the spirit of fair play to the tenants who have, from the action of Government, been recognised as hitherto entitled to protection

The Settlement Officers more likely to decide such disputes properly than the Civil Courts.

6. The Governor General is prepared to go even further than the Lahore Committee, who recommend "that the record of rights might be amended with "the consent of both parties, but that *in all disputed* cases a regular suit should be brought;" for he believes that extensive reference to the regular Courts would only lead to much heart-burning and litigation, while the special training and experience of Settlement Officers would be better available for the decision of such disputes, than could be found in the officers who preside in the ordinary Courts of the district.

General principles for their guidance.

7. It is believed that, if certain principles are laid down, Settlement Officers may well be entrusted with the duty of correcting the settlement entries without referring each case for enquiry first by regular suit. The Governor General would accordingly lay down the following general principles for their guidance.

When the Settlement Officer may interfere.

8. Where discontent exists, or where actual complaint is made to the Settlement Officer, he is authorized to interfere and modify the record of rights according to circumstances, on certain principles to be fixed, having for their object the adjustment of all claims and disputes, if possible, first, by compromise, and, failing this, by the ordinary Courts.

The detail of principles.

9. These general principles, after due consideration, are now detailed in the following review of the different chief classes of tenants which have been discovered to exist according to Settlement Commissioner's analysis, embodied under para. 69 of his Annual Report.

The classes of tenants affected.

10. The enquiries made in three districts of Umritsur Division show that there are 60,000 cultivators recorded as having rights of occupancy at last settlement, who are found to belong to the following classes:—

Classes.	Total Number.	Area.
1. Shareholders in village ownership	8,430	35,381
2. Long resident tenants	14,563	39,264
3. Mere village servants	14,498	68,727
4. Relatives of proprietors	1,402	9,389
5. Persons holding mortgages	955	7,714
6. Pykasht, or non-residents	10,555	49,335
7. Jagheerdars	287	1,593
8. Maafeedars	8,038	23,161
9. Religious places	1,758	9,644
10. Trustees and Managers	128	620
Total	60,114	2,81,788

Review of each class.

11. Each class is reviewed separately :—

1.—*Shareholders in Village ownership.*—If they hold the land merely as managers in a common holding, or if special terms or engagments exist accounting for occupancy, and the *tenants admit* the *management* and *the existence* of such *engagements*, then the Settlement Officer will satisfy himself on these points and modify the record. If, however, those recorded as tenants of this class do not consent to this mode of enquiry, will not compromise, and urge that they have certain adverse rights, then they should be referred to regular suits to establish whether the right claimed is tantamount to that of ownership, or entitled to protection on the ground of privileged occupancy as a tenant.

2.—*Long Resident Tenants.*—In cases of this kind, the Governor General sees reasons to apprehend evil consequences if due regard is not had to long occupancy. He would allow a right of occupancy where the tenure extends to 20 years or two generations, the condition being that where no specific terms of rent have been fixed at the last settlement, or where the rent cannot now be settled by compromise, the Settlement or District Officer shall arbitrate and decide as to the imposition of rent for the future. Provided that hereafter on any suit for eviction or enhancement, it shall be open to the proprietor to prove that by the usage of the village the cultivator is not possessed of the right of occupancy, and in such event the Court shall rule in accordance with the custom so proved.

Where, however, the rent has been fixed for *the term of settlement*, or for a term of years, that rent shall hold good for that period, and then be open to re-settlement between the parties; if they cannot adjust the matter themselves, then by reference to Settlement or District Officers, as the case may be, the district being under revision of settlement or not.

3.—*Village Servants.*—Whenever it is proved to the satisfaction of Setttlement Officers that these lands are *really held* on *the condition* of *some service continuously rendered* up *to time* of enquiry, then Settlement Officer has power to modify the settlement entry, so that it shall contain the nature and condition, whatever it may be, of such tenancy.

4.—*Relatives of Proprietors.*—These, the Governor General is inclined to think, would be entitled to the higher status of proprietors, and if they claim this, they should be required to make regular suit. If however, verbal agreements can be substantiated, or if those recorded as tenants having a right, admit they hold in trust, or permissively, then only should settlement entry be modified by such consent.

5.—*Persons holding mortgages* can, in the Governor General's opinion, be entitled to hold merely on the terms of the mortgage, which should be looked into by Settlement Officers, and the entry be corrected accordingly.

6.—*Pykasht or non-residents.*—As the evidence shows that Pykasht tenure is in the Punjab weak, the Governor General has no objection to the settlement entry being corrected regarding these, subject to the general principle above laid down.

7.—*Jagheerdars.*—These are few in number as elicited by the enquiry; and as in Sikh times they naturally acquired such lands and would never have been disturbed, and bearing in mind, further, that they never would have been required to pay rent, and perhaps have never paid rent to any superior class in the villages, the Governor General would even give the higher status of proprietors should any dispute or claim be advanced, but the parties should be directed to bring regular suit.

8.—*Maafeedars.*—The same remarks would apply here.

9.—*Religious places.*—The Governor General cannot see here that any question of eviction would be likely to arise, but it may be laid down that, as a general rule, no eviction would take place. So the right of occupancy, where recorded before, should be maintained, conditional on the terms of the grant of such lands being fulfilled and the holders performing the duties required in the maintenance of such institutions for the common good of the village.

10.—*Trustees and Managers* can have no claim to consideration as regards the occupancy of any land they may hold beyond the terms of their trust and management. Here Settlement Officers can modify the entries according to general principle above expressed.

These principles may be opened for guidance, should the Lieutenant Governor agree.

12. Having expressed his sentiments regarding each class of tenants, the Governor General does not wish it to be understood that he insists on their being followed out contrary to the views that may be held by His Honor the Lieutenant-Governor; but that, if the Lieutenant-Governor considers the above provisions meet the requirements of each class, and are likely to facilitate the general correction of records in the present revision of settlement, he is at liberty to circulate them for the guidance of the Settlement Department. If, however, any good reasons can be advanced to show why such principles should not be pursued, the Governor General will feel glad to be informed of the same, by as early date as practicable, as he is quite ready to give the fullest consideration to questions of such importance involving great interests, and bearing on the well-being of two great sections of the agricultural community.

Note by the Hon'ble W. Muir, *Secretary to Government, dated* 15*th October* 1866.

Government of Punjab, No. $\frac{331}{314}$, dated 15th September 1866.

The present note is submitted in pursuance of His Excellency's instructions of 21st ultimo. I delayed its preparation in expectation of a second report from the Punjab on the Bill to revise Act X. of 1859; but no such report has, up to the present time, been received either in the Home or Foreign Department.

2. It is not, I believe, necessary for me to enter into any analysis of the evidence on the nature of tenant-right conveyed in these papers. I may remark generally that this right does not, in its origin, appear to differ essentially from what we find in North-Western Provinces. But there is a distinction in two points. The Punjab has been a shorter time under the influence of our laws. And thus, although the principle of occupancy-rights accruing from prescription, and more especially of the twelve years' rule, has been applied very generally in the Punjab in former settlements, still the result is less stereotyped than in the North-Western Provinces. There, we have the customs and expectations grounded on a course of administration extending over more than 60 years : here, over but 16,—and, consequently, there is less difficulty in retracing our steps, supposing anything to have been wrongly done. The rights and expectations that have grown up are not so strong or irreversible.

The difference between the Punjab and N. W. Province as to prescriptive right of occupancy.

3. Another point. The custom by which the Zemindars associated with themselves non-proprietary cultivators, and invested them with a quasi-proprietary position, in order that they might aid them in bearing up against the burden of a heavy assessment, seems to have been far more common in the Punjab than in the North-Western Provinces. In the latter, we find it in the District of Goorgaon,* where the number of this nondescript class, with a position midway between a tenant and a proprietor, is very considerable. We also meet with them in other districts.† But nowhere does the class appear so common as in the Punjab. This may have arisen either from the pressure of the assessment, or the scarcity of cultivators, or from both causes. Now that the demand is lightened, and cultivators are more numerous, there is a disposition on the part of the proprietors to disavow the position formerly assigned by themselves to this class. But even in Oudh, as we learn from Mr. Capper, such associated cultivators "have acquired a title in respect to an actual holding which we recognize now as proprietary." It is not surprising, therefore, that the Lieutenant-Governor of the Punjab desires to treat this class as entitled to special privileges.

The intermediate privileged class of tenants more common in the Punjab.

* Vol. III., Selections from the Records, N. W. P., Art. II., p. 11.

† So even in Oudh. See p. xlviii., Appendix II. of my note on the late investigation in that Province.

4. Indeed the low rates of rent current throughout the Punjab in the earlier period of our administration is one of the most remarkable features in the system. Great numbers of cultivators are described as paying "no rent;" which means, not that they were rent-free, but that they paid the quota of the revenue assessed by Government of their lands and nothing more. Subsequently, as rents tended upwards, rules were introduced limiting the power of the Zemindar to enhance rents above a certain percentage (18, 20, &c.,) beyond the quota of Government revenue assessable on the land. These rules have, I believe, been now swept away; but they were for some considerable time in force, and no doubt served to create expectations on the part of the cultivator which it is the tendency of Mr. Prinsep's principles too rudely to crush. By one of those extreme oscillations of opinion always liable to occur, Mr. Prinsep would ignore almost any right or consideration in behalf of such ryots.

The low rate of rent current in the Punjab.

5. Mr. Prinsep has carried out his system in the Umritsur Division, and believes that he has revised the returns of the former settlement in accordance with the real wishes of the people. The general result is as follows.

Mr. Prinsep's system.

The numbers of tenants affected

6. In the three districts of this Division there are 1,69,000 ryots. Of these (in round numbers), 1,09,000 were at the former settlement declared tenants-at-will, and 60,000 hereditary cultivators.

Result of the enquiries.

7. Taking the 60,000 cultivators formerly declared hereditary, the result of the present inquiries has been to record—

1.—As having occupancy-rights	15,547
2.—Ryots whose rights have been commuted into lease for a period	29,558
3.—Reduced to absolute tenancy-at-will.. ...	12,592

Thus, practically, nearly three fourths of those recorded at the former settlement as hereditary, have been disfranchised by Mr. Prinsep.

The rent assessed on those who paid none.

8. Of these 60,000 cultivators, it is stated that by the former settlement 24,700 "paid no rent," that is, paid only the share of the revenue assessable on their fields. They have all been now charged full rent.

Customs of the people assumed as certain.

9. Mr. Prinsep assumes certain things as axiomatic according to the customs of the people. Thus he holds that "relatives have no rights;" and also that proprietors cultivating in the share of another, or in the common lands, have no rights in respect of such holdings. This is in conflict with the practice in the North-Western Provinces; but there the sharer, so cultivating, pays full rent, while in the Punjab he would come under the class paying little or no rent; and it is this I conceive which makes the people unwilling to recognize a right which would be one not of common tenancy, but virtually of quasi-proprietorship. It is to be noted that Colonel Lake concurs with Mr. Prinsep in the second of these conclusions (para. 16 of his memo.).

The leases granted are poor compensation.

10. In class 2 of the above abstract, the claims of holders have been commuted into leases of various periods (some as short as three or five years), which leases are supposed to be in full compensation of the rights or expectations of the ryots,—a poor equivalent. The arrangement will probably not be acted on by the parties; for the cultivators will no doubt continue to hold as before. But on the occasion of any disagreement hereafter, the result of Mr. Prinsep's arrangement would be to confer on the proprietor free and arbitrary power to eject the ryot without any further compensation of any kind.

The Financial Commissioner heard few complaints.

11. Colonel Lake, Financial Commissioner, examined the awards of Mr. Prinsep in some 50 or 60 villages, "and in only a few cases did either tenant "or proprietor complain of the terms that had been conceded to them."

But thought the people less interested in the question than European Officers.

12. But Colonel Lake adds significantly :—"Indeed I observed through-"out that *European Officers appear to be more interested in* "*the question than the parties themselves*, who do not yet "recognize its importance or all its bearing." It is very doubtful whether, in the prospective arrangements made by

Mr. Prinsep, the parties concerned, and especially the cultivators, did really understand what was being done, or will fully understand it till a cause of action arises. They accept with indifference what is provided for them, and do not trouble themselves about future contingencies. So long as they are not actually ousted, the occupants do not care what arrangements are made on paper; and they trust to their value as cultivators to secure them from the possibility of ever being ousted. It has been found so everywhere; and in Oudh, even as to the rights and position of *proprietary* holders, the people are disinclined to stir until an actual infringement of their rights has taken place.

And dissents from Mr. Prinsep on various points.

13. Colonel Lake dissents from Mr Prinsep's conclusions in various points.

Paras. 17 et seq.

He does not concur in holding that Pahee-kasht or non-resident cultivators have no right of hereditary occupancy, or that village servants have necessarily no right of occupancy. Generally, Colonel Lake holds that "if it can be shown that a tenant has been long "settled in a village, and that his holding has descended like any other heritable "property from father to son, or that under the Sikh rule, "the tenant enjoyed the profit, and was held accountable for "the loss of his holding, then ordinarily the tenant is entitled to a right of "occupancy.

Para. 25.

Objecting to revision were the entries are unchallenged.

14. He would review the cases in which the rights of such cultivators have been commuted under Mr. Prinsep's rule into lease for a period. He would not revise entries of former settlements not objected to by either party. And he very justly observes that if an adequate rent, and an adequate margin of profit, be enjoyed by the proprietor, he will be satisfied and have no wish to evict. Indeed the assessment of inadequate rents, affording sometimes no margin of profit whatever, is evidently the point on which the Punjab system has hitherto been weakest. It is wonderful that the proprietors were not more dissatisfied with it; and their having borne it so long would seem to show that if this, their main grievance, were properly disposed of, they would be well satisfied.

Sir D. Macleod's Minute.

15. On His Excellency's Minute reaching the Lieutenant-Governor, Sir D. Macleod has now communicated his views npon the whole question.

His view of occupancy-right.

16. Generally, he is unwilling that "*perpetuity* of occupancy-right" should be recognized, and thinks the requirements of the case may ordinarily be met by certain conditions in conformity with custom, and by the award of compensation whenever eviction does take place.

And the consideration due to sub-proprietors.

17. The Lieutenant-Governor would treat the class of quasi-proprietors (see above para. 3) separately. He speaks of them as resembling the "ex-proprietors" or "sub-proprietors" of Oudh, but wrongly so. These latter have proprietary holdings, the remnant of their former proprietary or Zemindaree rights. The class under consideration in the Punjab, were not originally proprietors in the proper sense of the term. They were associated by the Zemindars with themselves; under

such association they have enjoyed certain privileges, and so have grown up into a state of merely quasi-proprietorship. In respect of these, the Lieutenant-Governor proposes that their rents (those fixed at the revised settlement I presume), should hereafter be liable to enhancement "only with reference to a fall in "the value of money," or to a rise in the value of agricultural produce. And the proposal seems good and equitable.

Para. 24.

The others classes.
Para. 9.

18. The remaining cultivators, Sir D. Macleod would divide into—

1.—"Those who have held their lands through long periods, or through "several generations, or have reclaimed waste lands belonging "to others."

2.—"Tenants-at-will."

Compensation to tenants at will.

19. The second class are not again referred to, and, apparently, may be ejected at any time without compensation. It seems doubtful, however, whether, even in respect of these (where they do not hold merely from year to year, or in virtue only of a terminable lease), some right of compensation for improvements should not be recognized. I purpose introducing a section, on the analogy of the late Oudh rules, something to this effect, in the Draft Bill now before the Executive Council.

The test for determining the privileged class.
Para. 21.

20. In respect of the first or privileged class, the Lieutenant-Governor agrees that the test laid down in the Bill to revise Act X. is appropriate for determining what cultivators are entitled to be admitted into that class.

Which should be retrospective.

21. But he is of opinion that—

1. The action of this test should be retrospective only; and

2.—That on sufficient cause being shown, they should be liable, under certain conditions, to ejectment.

* See below, p. 7.
To make the test only retrospective would be unfair to the tenant.

22. On the first point I would beg a reference to paras. 44 to 53 of a Minute recorded by me in 1863,* as exactly setting forth what appears to me the difficulty in making the test purely prospective. I do not believe that any registration, however careful and perfect, will, in reference to the indifference and ignorance of the people, be complete and exhaustive. To make the test purely retrospective would be to throw upon the ryot in all time to come the onus of proving that he or his ancestor was at this settlement (or at the passing of the proposed law, or of rules made under it), entitled under the test to an hereditary right of occupancy. Even with good registers, it is often difficult after the lapse of years to identify fields and ryots, and to connect the former state of things with that which, in the continual changes of years, has been gradually assumed. Fifty or sixty years hence it would be a vain privilege to many a poor cultivator to tell him, "if you can prove that in the year 1866 your ancestor "was entitled, under the test then laid down, to a hereditary right in a certain "field, then we shall recognize your title now."

23. I think, therefore, that the conclusion to which I came in 1863 is the right one, *viz.*, that the test should remain for the future; but "it should be open to the Zemindar to prove that "the tenure was not, at the time of the proposed law, an "hereditary tenure, which he could do by proving either "that the tenure had been formed subsequently to that law, or had not been in "existence under the prescribed conditions at the time of its passing." The Zemindar has far superior advantages in the way of record and other means of proving his point over the ryot; it is not, therefore, unreasonable to allow the latter to plead length of possession in presumption of his claim, and to throw the onus of disproving that presumption on the Zemindar.

In whose favour the presumption of long occupancy should be given.

24. There is one remark by the Lieutenant-Governor which is, I think, misleading. He says that "to apply such a ruling to the "future must virtually prove inoperative, as no proprietor "would deliberately allow a tenant-at-will thus to acquire "hereditary privileges, unless it were his intention to confer them, which he is, "of course, always at liberty to do." But the Lieutenant-Governor has omitted a third contingency, *viz.*, that the parties may be altogether apathetic and indifferent at present to the subject. While in this frame, the Zemindar, however little disposed to question the right, would hardly ever actively *confer* it; yet he might be either indifferent or not unfavorable to its growth; and I believe that in the majority of cases this would be found to be the case. The prescription contemplated in the amended Bill is a very long one, and there would always be the opportunity, *at the first succession*, for the proprietor to step in and say whether the tenure is to descend. Where he allows it to descend, he may fairly be held to have approved the hereditary nature of the tenure.

Para. 21.
The case of the parties being indifferent.

25. Second; the Lieutenant-Governor recommends that "on sufficient ground being shown," hereditary cultivators "be ejected on payment by the proprietor of suitable compensation."

Para. 21.
Ejectment of hereditary cultivators.

Or more fully:—"So long as they pay the rents demandable from them, "the proprietor should be prohibited from ejecting them, "unless some very sufficient reason can be assigned, such as "that the land is required for the use of members of his own family; nor should "he be allowed to eject a tenant having strong claims, when the land of a "tenant having inferior claims is equally available; while, in every case, "two or three years' previous warning should be required;" the amount of compensation, where it cannot be mutually agreed upon, to be determined by arbitration; the minimum limit being fixed at five years' profits, the maximum at 10 or 20 years' profits, in addition to compensation for improvements.

Para. 13.

Para. 14.

26. These conditions (similar to conditions mentioned as customary in some parts of Oudh) are very vague: it would be difficult for any Court to rule that a proprietor did *not* require the land for himself, or for some member of his family; or that there was some other ryot, having inferior claims, whose holding should first be appropriated. Still, if these are really the customs of the people, it may be right to recognize them. I suppose that if a proprietor took a cultivator's holding on the above pretext, and instead of cultivating it himself let it to another cultivator, the ousted cultivator would have a ground of action against

The conditions proposed or vague.

the proprietor. But, in point of fact, such a suit could hardly be contemplated; and, therefore, practically, the power of the proprietor to resume any holding on the above plea would be arbitrary and complete, and would be restrained only by the compensation he would have to give to the ousted cultivator.

The Lieutenant Governor's proposal regarding ejectment.

27. I presume that in respect of all hereditary ryots, the Lieutenant-Governor's proposal is, that prior to ousting he *must apply to the Court*, and there prove that a case has arisen which, according to the custom, warrants ejectment. On that being proved, the Court would determine the amount of compensation.

Regarding rent.

28. I proceed to the Lieutenant-Governor's proposals as to the determination of enhancement and rates of rent.

The right of the proprietor to share in the improvement.

29. He differs from the Bill, first, in thinking that where rent is enhanced by the sole exertions of a cultivator, the proprietor should not be debarred from a share in the increased profit. On mature consideration, I am inclined to agree in this view; first, because the general proprietary right of the landlord renders this reasonable; and secondly, because if he is debarred, it takes entirely away the motive on his part to encourage improvements, whereas the power often lies entirely with him of permitting and facilitating them. I purpose to amend the Bill accordingly.

The rate of rent.

30. Next, the Lieutenant-Governor thinks that instead of indicating any fixed proportion, as $12\frac{1}{2}$ per cent., at which the hereditary cultivator shall be rated below the market rate, a maximum and minimum rate should be fixed. Perhaps in revised Bill, it might be left to the Court to fix the rate any where within 20 per cent. of the market rate. I am considering this point in reference to the amended Bill.

A commission more satisfactory than arbitration.

31. Instead of arbitration, I would suggest whether the Courts might not make use of the power given by the Civil Code* of appointing a Commission to enquire locally. Any respectable person could be nominated a Commissioner; and this procedure might often prove more satisfactory than arbitration by men whom the parties would generally select for their personal bias or prepossessions.

* Section 180.

The case of the Punjab met by the last section of the new Bill.

32. In respect of the extension of Act X., &c., as revised by the Bill, to the Punjab, the Lieutenant-Governor seems generally in favor of the measure, if his own modifications in respect to the conditions of occupancy and the ejectment of hereditary tenants and the settlement of enhancement are admitted. On this I would observe that the concluding section of the Bill was meant to meet such cases as that of Oudh and the Punjab, where customs and rules differing from the older provinces, in respect of the conditions of occupancy and enhancement, were supposed to exist. If the last section stands, then instead of sections 6 and 17 of Act X., the Local Government could, with the sanction of the Supreme Government, promulgate such rules as the local customs and peculiarities of the province require. If this

section be not maintained, the Punjab would, of course, require to have any divergencies from the law passed for the older provinces, legally sanctioned for itself.

Extract of Mr. Muir's Minute of 1863, *on Act* X., 1359, *referred to at page* 4.

Para. 44. But the practice of recognizing long occupancy in any capacity (excepting in lieu of service) as conferring a prescriptive title does exist. It is needless now to enquire into its origin, whether it is purely indigenous, and preserved as such by our early administrators; or whether it grew out of their confounding the more fixed classes of ryots with the village communities.* Whatever its source, the existence of a ryottee title by prescription is admitted by an all but universal consent; and even had it no other foundation, a right fostered, if not created by our own practice during the 60 years that have elapsed since the cession, unquestionably must be respected. Two questions then arise,— what should be the test of such "length of occupancy" in determining whether any existing tenure falls under the category of "hereditary?" and second, should the application of that test be permitted prospectively ?

45. In respect to the first question, there cannot, I think, be any doubt that the bare rule of 12 years' occupancy was wrong ; and if so, the sooner the error is rectified the better.

* * * * * * * * *

48. But what is the test which shall fairly represent the present custom of the country, and which, on the one hand, shall not unfairly infringe the rights of the proprietor, and, on the other, not disappoint the reasonable and just expectation of the ryot ? The test must, of course, be arbitrary ; but it may notwithstanding be more or less in accordance with the above conditions.

Test proposed in modification of the present Law.

49. I do not think that it should be short of 25, or at least 20 years' occupancy as the minimum ; and to establish the practice in each individual case, evidence of two successions should be required. The rule of inheritance should not, however, be drawn too tight ; succession should be recognized in the person of any member or relative of the family, who, by the custom of the vicinity is entitled to succeed.† If this test is thought too stringent, the following modification might be introduced :—25 years with one succession, or 16 years with two successions.

50. I believe that a rule to the above effect would not exclude any parties entitled as of right, by the prevalent custom, to maintain their possession ; on the other hand, where a family has been in possession for at least a quarter of a century, and two successions have taken place, a strong presumption is created that the case falls within the usage of prescription, at any rate within that phase of it which has grown up under the influence of our administration ; and the recognition of the right will not, I conceive, be any hardship to proprietors who have already in practice permitted so long the occupancy to continue, if not the title to grow.

51. This proposition would go to fix all who are found on any suit for ouster, or who may be registered at the general revision of settlement, as prescriptive occupants, in the enjoyment of a right of premanent occupancy at customary rates ; and if any such registeration could be supposed to be perfect and exhaustive, I would have been inclined to advocate that it should be held final and exclusive, that is, no future claims founded on the existence of a growth by prescription should be admitted, for I do not think that the theory of *growth* is sufficiently established to warrant the recognition of a principle so opposed to economical improvement.‡

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* See *e. g.*, Clause 9, Section 3, Regulation XLI. of 1795 :—" Zemindars, Putteedars, and *other* Chupperbund assamees or ryots." The course of events in Bengal, where the rights of the former are alleged to have been too often ignored, would very naturally lead to the confounding of both classes.

Since writing this paper I have received from Mr. Cust a collection of Reports on the question as it affects the Punjab. The difference between the *tabula rasa* of that province and our older acquisitions is there forcibly brought out ; and yet it is very evident that an application of our North-Western Provinces' Rules was fast bringing the Punjab in respect of the creation of hereditary ryots into the precise condition we find among ourselves.

It is also remarkable that the existence of a class of hereditary and non-proprietary cultivators has been altogether denied in Oudh, which (if a correct exponent of the actual status of rights there) would go far to prove that at the cession from the Nawab Vizier there were no such rights in these provinces.

† A discretion should also be allowed as to changes in the fields held, where the custom of varying the lands composing a hereditary holding, spoken of in paragraph 9, Circular Order, 26th September 1856, is found to exist —(Page 497 of Directions to Collectors.)

‡ I observe it has been laid down in No. 6 of Mr. Cust's " positions " that the growth of a mouroosee right has been negatived in the Punjab. He writes :—No new prescriptive rights of this kind are now forming ; no length of occupancy by a tenant-at-will, will convert his tenure into one of the higher grade."—(Collection above quoted.)

52. But I do not think that any registration made by us at the settlement can pretend to be exhaustive and complete. Even where the dearest interests are concerned, we find people indifferent and negligent in the assertion of their claim to their registration,—perhaps, even suspicious of our object in requiring it; and further, where large masses of cultivators are in a state of such simplicity and ignorance, it is absolutely impossible to publish any new rule of practice like that above proposed, so that it shall be universally known, or to make the people alive to the necessity of registration on pain of forfeiture of their prescriptive right.

53. I would, therefore, for the present, maintain the test of prescription above proposed as a prospective test for the disposal of all claims either on the part of the cultivator to be a mouroosee, or on the part of the Zemindar for ouster; with this modification, that even where the test was found to hold good, it should be open to the Zemindar to prove that the tenure was not, at the time of the passing of the proposed Law, a hereditary tenure, which he could do by proving either that the tenure had been formed subsequently to that Law, or had not been in existence under the prescribed conditions at the time of its passing.

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Note by the Hon'ble Colonel H. M. DURAND, C. B., *Member of the Council of the Governor General,—dated* 23*rd October*, 1866.

Doubts the expediency legislation with regard to occupancy rights and disaproves of making the occupancy of privileged tenants, perpetual.

IT is to be regretted that these papers were not, as proposed by Mr. Prinsep, earlier printed and put into the hands of Government. They demand the most careful consideration, for if any thing can convince us of the inexpediency of hasty action and interference in the rights of landlord and tenant, it is this remarkable exposure, by Mr. Prinsep, of the gross errors into which we have fallen in the Punjab.

I agree with the Lieutenant-Governor that it is hardly possible to overestimate the value of Mr. Prinsep's labors, and I would add that the honest candour with which he has stated the results of his careful investigation cannot be too highly appreciated.

The effect upon my mind is to make me doubt the wisdom of legislation in a form to stereotype our own crude theories as to occupancy-rights. In our comparative ignorance of local customs, what are called broad measures of legislation, based on a policy adverse to the rights of property, are pretty sure to plunge us into grave errors, and what Mr. Prinsep styles "the reality of confiscation." The Lieutenant-Governor explains in the 22nd paragraph of his Minute, that where the Lahore Committee recommend a resort to a regular suit, they do not intend a suit in the Civil Court, but a regular suit before the Officers of the Settlement Department, as contradistinguished from the general enquiries necessarily made into the general constitution of a village, and the summary ascertainments of facts resorted to in preparing the draft of khasrah or detailed record. Provided care were taken to record carefully the customs of the village, group of villages, or district in the course of the settlement operations, and such records of the customs were regarded by the Civil Courts as *prima facie* authoritative, at any rate, in the absence of positive proof to the contrary, I am disposed to think it would be far better to leave the discussion and settlement of contested rights to the ordinary Civil tribunals.

I concur with the Lieutenant-Governor that great and permanent dissatisfaction, as well as serious obstruction to progress, will result from giving perpetuity to the occupancy of ordinary hereditary tenants. I object to arbitrarily

fixing 20 years, or any other period, as constituting hereditary tenure, and would leave such questions to be decided by local customs, and, if litigated to be disposed of by the Civil tribunals.

The classification proposed by the Lieutenant Governor may be passable as a rough approximation for general guidance, but it is open to all the objections of a purely arbitrary classification if regarded as absolute.

I doubt the applicability of Act X. of 1859 to the Punjab, even if amended.

I should wish for copies of these printed papers, with a view to fuller consideration than the subject has as yet met with at my hands, though it has had my attention since the papers reached me, and demands, from the gravity of the interests at issue, and the weight of the precedent to be established, much more deliberate review than it has been in my power, with other questions pressing at the same time, to afford the subject in the course of four or five days. I reserve, therefore, the privilege of entering more fully into the matter hereafter.

Note by the Hon'ble W. GREY, *Member of the Council of the Governor General,— dated* 24*th October*, 1866.

Advises that the proposals of the Lieutenant Governor be entirely accepted.

As it would be impossible for me now, before leaving Simla, to give these papers the close and careful study which they require for a complete apprehension and appreciation of them, I also must take leave to reserve the right of discussing them further hereafter, if necessary, and I would ask the favor of being furnished with a copy of them if there are any spare printed copies available.

Meanwhile, and notwithstanding my, at present, very imperfect mastery of the case, I would venture to advise that the proposals of the Hon'ble Lieutenant Governor of the Punjab should be entirely accepted. Sir Donald Macleod's Minute and the papers which accompany it, show that the subject of tenant-right has not only been most fully investigated, but that it has been considered in a very liberal spirit, and with the sincerest desire on Sir Donald's part to allow the cultivator the utmost consideration (perhaps even a little more) that the customs and the convictions of the people fairly warrant. The Lieutenant Governor's proposals, as summarised in para. 25 of his Minute, seem to me to go certainly quite far enough in giving the protection of the law to tenants with rights of occupancy, and I entirely agree with the Lieutenant Governor (para. 21,) in considering that the proposed term of 20 years, or two generations, should be of *retrospective* operation only, in conferring rights of occupancy. On this one point only, therefore, I should hesitate to assent to the issue of a letter to the effect of the Secretary's note.

Native usages should be treated with all consideration.

I cannot conclude these brief observations without saying how much I have been struck by the 19th para. of the Lieutenant Governor's Minute. It has always seemed to me that when Indian Officers seek to promote their own views and theories, there is ever an immense deal of confident assertion as to native usages, and

native feelings and opinions, which really, however, has no sound foundation. I confess, for my own part, that I feel the profoundest diffidence in dealing with questions affecting the social usages of the Natives of India whenever they come under discussion, such, for instance, as some that have been recently raised in Bengal, and I think it would be well if, in India, we were more impressed with that spirit which speaks in the 19th para. of Sir Donald Macleod's Minute. It is at least worthy of note, as coming from one who has studied and observed the Natives of India for a longer period, and with more acuteness and accuracy probably, than most public men in this country.

Note by the Hon'ble H. S. MAINE, *Member of the Council of the Governor General,—dated 26th October,* 1866.

The difficulty of forming an opinion from the conflict of authorities.

THIS is, I must say, one of those proposals which are calculated to drive to despair any Member of the Government of India who has joined that Government straight from England. The facts are these. Eighteen or nineteen years ago, the settlement of the land revenue of the Punjab, then just brought under British rule, was effected, and, as is usual in India, the status of the various classes of proprietors, sub-proprietors, and tenants, was ascertained. Within the last two years, Mr. Prinsep, the Punjab Settlement Commissioner, has had a sort of roving commission under which he has assembled Juries, if they may so be called, of the cultivating classes, and by their help he conceives himself to have discovered that serious mistakes were made in the recording of rights at the last settlement. Colonel Lake, however, the Financial Commissioner, who appears to have gone over the same ground with Mr. Prinsep, questions some of his most important results. The Lieutenant Governor, Sir D. Macleod, differs in some particulars both from Mr. Prinsep and Colonel Lake. The Viceroy dissents, to some extent, from all three, and so does the Foreign Secretary, Mr. Muir. Now, we know that nobody connected with the Government has had experience of the country, as regards actual contact with the land and commerce with the people, which can be compared with that of Mr. Muir and the Governor General. Sir D. Macleod, I quote Mr. Grey, "has studied and observed the Natives of India with more acuteness and accuracy probably than most public men in this country." Mr. Prinsep "possesses special qualifications" for this enquiry. Colonel Lake, finally, is described by the Lieutenant Governor as "the most thoughtful, perhaps, and free from prejudices of all the Officers who have adorned this administration." I do not in the least deny the justice of these compliments, but I need scarcely point out the difficulties they place in the way of those who must decide the point mainly by evidence and authority.

There is further this element of suspicion—of course I do not use the word in any injurious sense—which pervades the materials for an opinion. The old settlement reflected the ideas on the subject of property and tenant-right which were then all but universal in India, and which nobody of much credit denied. Mr. Prinsep's discoveries on the other hand, and the proposals of Sir D. Macleod, fall in with the views which have recently become prevalent, which have the support of the great European interests in Lower Bengal, and which have been advocated of late with so much tenacity and vigor by Sir C. Wingfield in Oudh. The accusation that an opponent is governed by theory, and sees the facts through the prejudices which that theory creates, is common to both schools.

But this is not all. Sir D. Macleod tells us that "the state of things existing in the Punjab for a long series of years preceding annexation was such as almost to extinguish proprietary rights in land, or, at all events, to deprive them of nearly all their value. The people in consequence possessed but very indistinct ideas in regard to these rights, so that the best security for a correct ascertainment of the rights and relations of the several classes connected with the land are wanting." The same statement, with fewer qualifications, is repeated several times by the Subordinate Officers whose opinions appear in the papers. The truth appears to be that, when Mr. Prinsep proposes to redistribute these rights, he proposes to redistribute something which is exclusively the product of British rule in the Punjab. The rights are nothing without the enjoyment which they carry with them, and this enjoyment it is proposed to take away from somebody who now has it, and to give it to somebody else. When I was in the Punjab in 1864, a very high authority told me that whenever he questioned a person of the Sikh cultivating classes about rights of property, previous to annexation, the answer was, "why do you ask me such a question? *It is you who have created property.*" Yet, if British rule created the property, I cannot see that it has very deeply sinned if it decided somewhat arbitrarily who was to have it. I should say that we should commit an injustice far more deeply felt if we took it away from those who have enjoyed it for 15 or 20 years, no very short period as compared with the whole duration of British Empire in India. The transfer of property has, moreover, to be effected in the face of Colonel Lake's statement that, when he followed in Mr. Prinsep's footsteps, he found nobody discontented with existing arrangements. Colonel Lake further remarks—and this is exactly what I should have expected—that the European Officer appeared to have been a good deal more interested in the enquiry than the people themselves.

Rights created by the British Government were necessarily assigned by them.

While then I concur with Colonel Durand in thinking that the existing arrangements should not be disturbed, I cannot agree with him in attaching any extraordinary importance to Mr. Prinsep's results. What in fact did Mr. Prinsep do? He interrogated a number of very ignorant men about some most intricate rights which are admitted to have been in abeyance for 15, 18, or 19 years, and which, if they existed, are admitted to have had no value. No doubt the poor and ignorant of all countries are occasionally the best authorities on matters of usage and custom, but this is on condition that the usage and custom are of practical interest to them and mixed up with their everyday life. An English agricultural laborer sometimes evinces a singular knowledge of his rights under the law of Pauper Settlement, which is by no means an easy branch of English law, but he certainly could never state what the law on the subject was 20 years ago. Yet the law of Pauper Settlement has been through all his life, I am sorry to say, a subject of the utmost moment to the English laborer.

Does not attach much importance to Mr. Prinsep's results.

Nobody brought to India stronger conviction than I did of the policy of abandoning all English or European generalizations in India, and of respecting native usage even though it should be unreasonable; and if there was one class of usages which I should have supposed more deserving of respect than another, it was the custom which constitutes the tenure of land. But while nothing seems to me to exceed the tenacity of the natives of India in adhereing to personal family, and religious usages, and to those customs

The customs regulating Indian Revenue law are less general than have been assumed.

of holding property which are closely implicated with family relations, such as joint ownership and joint occupation, I must say that I have come to the conclusion, however presumptuous it may be, that there is a vast deal less of actual custom regulating the tenure of land by the cultivating classes than the large assumptions of the Indian Revenue law, on the subject of custom, would lead one to suppose. If, indeed, the native governments which we succeeded were such that their indiscriminate taxation made no practical distinction possible between rents and imposts, property and tenantcy, beneficial occupancy and rack-rent, indistinctness of usage would seem to be the natural result of their system. I do not indeed impute to any of the schools of Indian administrators which have affirmed the possibility of discovering native usage on all subjects, that they are merely theorising gratuitously—least of all to that school which asserts that ownership is everywhere in India limited by beneficial occupancy, because such a theory could by no possibility have suggested itself to a person under the dominion of merely European ideas and experience; but I must say that there is now great reason to believe that the doctrines of all schools are founded on partial observation, and that it is the indistinctness of usage throughout India, taken as a whole, which has tempted and enabled the partizans of each school in turn to attribute to its principles the character of universality. At all events, this is the only way in which the conflict of authority can be explained consistently with the reputation of the disputants. I will even assert the necessity of this explanation in interpreting the evidence which the Oudh enquiry produced. However conclusive it may seem to be, I cannot forget that my late colleague, Sir H. Harington, served in a district of the North-Western Provinces, just severed from Oudh, and he steadfastly maintained that he had found beneficial rights of occupancy existing there, and I doubt whether I ever knew a man more careful in detail and patient in observation than Sir H. Harington.

It is better to maintain mistakes than perpetually to interfere.

In the existing state of authority and opinion, I can see no rule to follow except to abide by actual arrangements, whether founded or not on an original misconstruction of native usage. I say, let us stand even by our mistakes. It is better than perpetual meddling. I am, therefore, entirely opposed to the present proposals, and also to the amendments of Act X. of 1859 proposed by Mr. Muir, and nobody would have opposed more strongly than I any disturbance of Lord Canning's Talooqdaree arrangements in Oudh, if only I could have persuaded myself that I understood what Lord Canning intended in respect of tenant-right and sub-proprietary right.

Does not admit the analogy between beneficial occupancy and copyhold.

I must add that I do not admit the correctness of many of Sir D. Macleod's remaks as to the analogy between beneficial occupancy and English copyhold. There is not the smallest reason for believing that copyhold was an objectionable form of tenure, so long as the copyholders were for the most part actual cultivators of the soil. On the contrary, I venture to say that in the legal or general literature of 150 years since, it will be found spoken of invariably with respect. But the great rise in the value of land at the end of the last century caused even land of copyhold tenure to become a merchantable commodity, and no doubt the incidents of the tenure are such as to render copyholds an inconvenient investment or form of property. Though property in the Punjab is very different from what it was under the Sikh rule, it would be absurd to compare it with landed property in England. If the machinery of the Copy-

hold Commission—which, I should observe, is very cumbrous and tedious and very little applicable to India—is to be employed anywhere for the extinction of tenant-right, it ought to be first employed in Lower Bengal, where, owing to the existence of great capitalist industries, there really are strong reasons for rendering land as marketable as possible. But it seems to me pedantry to apply it to the Punjab.

If beneficial occupancy in the Punjab, as it exists at the present moment, is to be abolished or limited at all, such abolition or limitation can only be justified on Mr. Prinsep's grounds. But I should feel much safer in applying the most sweeping theory of the great European thinkers on political economy or the most humid generalization of great Indian administrators, than in acting on the opinion of ignorant and puzzled peasants on difficult questions in which they have never had a practical interest. We may at all events be sure that amid the accumulated wealth which is the product of the peace and security flowing from our rule, all classes connected with the soil are immeasurably better off than they were under native governments, and are more than compensated for any errors we may have committed in the nice adjustment of their mutual rights.

Note by the Right Hon'ble W. N. MASSEY, *Member of the Council of the Governor General,—dated the 26th and 29th October*, 1866.

Agrees generally with Mr. Maine.

I CONCUR in the general view which Mr. Maine takes of this question. I have labored in vain through the dreary mass of papers which have accumulated on the question of tenant-right, to discover any safe and satisfactory ground of custom or usage upon which legislation can be built. The result seems to me that there is no such ground; that, acting upon European ideas, we have assumed the existence of a state of things which is discoverable by enquiry and research, and that we have been prone to generalize upon vague evidence and isolated or accidental circumstances in accordance with our prepossessions.

With regard to the particular question, I must reserve my opinion. Under a pressure of Departmental business, I have not had time to read through papers which are marked "Urgent," but I have read enough to satisfy myself that the question requires much more consideration than I can bestow upon it at this moment.

Note by His Excellency the Commender-in-Chief,—dated 29th October, 1866.

Agree generally with Mr. Maine.

I AGREE generally with Mr. Maine, and I would take what has been already done in the Punjab as the point of departure from which to regulate our future proceedings.

Vide Sir D. Macleod, See, , para. .

If we have committed mistake we should now aside by them.

All parties are unanimous "that the state of things existing in the Punjab for a long series of years, preceeding annexation, was such as almost to extinguish proprietary rights in land, or, at all events, to deprive them of nearly all their value."

Thus, in point of fact, property has, as it were, been created by our rule, the so-called rights which so much excite the imagination of Mr. Prinsep having had no distinct recognition in the minds of the people most supposed to be concerned.

I entirely concur with Mr. Maine in his view of the value of Mr. Prinsep's investigations, Colonel Lake appearing to me a far safer guide.

It seems to me, therefore, that we are generally bound to adhere to what we have done during the last 20 years, including our own mistakes, if mistakes have been made. If we permit ourselves to reverse our doings, to institute organic changes because of the fancied discoveries of rights which, under the most favorable showing, had been in abeyance during the entire Sikh rule of upwards of a hundred years, we shall, as Mr. Maine observes, commit a deeper injustice than any which it is now sought to remedy.

I do not suppose that such a proposal could ever have been made in any country but India, which seems to be doomed to oscillate rapidly between the opinions of rival schools of thought. In Europe, we see the results of the oscillation of Party. In the latter, however, there is finality. With the former, there never is.

It is to be observed especially that the revival of the rights is coincident with the inhancement of the value of land, the tenants whom it is proposed to render liable to eviction having stood the chance of a doubtful speculation in the ancient evil times according to certain ruling notions which secured them permanent occupancy or something like it.

This feature seems entirely to escape Mr. Prinsep, whereas equity demands that it should be allowed to overshadow the consideration of the entire question

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Note by the Hon'ble G. N. TAYLOR, *Member of the Council of the Governor General,—dated* 30*th October,* 1866.

The best policy is to let well alone, existing arrangements should not be disturbed.

I SHARE Colonel Durand's regret that these papers were not printed and placed earlier in the hands of the Members of Government, because I have found it impossible to study them with that care which their importance deserves.

I must, however, express my general concurrence in the views of Mr. Maine. I believe our best policy is to let well alone. I do not discover that any large number of those who are immediately affected by these proceedings have seriouly complained of the state of things which was established by our first settlement in the Punjab some 16 or 17 years ago. And our settlements will surely become a farce if at every recurring interval of 18 or 20 years, which

is almost the period of one generation in India, we alter the previously recorded status of proprietors and tenants to suit the views of the particular class of thinkers which may prevail at the time.

I am strongly of opinion that actual existing arrangements should not be disturbed, except in clear and glaring individual cases, where it is admitted on all hands that injustice or gross error has been committed, and even in such cases it may often happen that the first mistake will be found to be a less evil than its correction.

I am averse also to the introduction of Act X., 1859, into the Punjab. I can only of course speak with the greatest diffidence, but it does not appear to me that any necessity is made out for such legislation.

Minute by His Honor the Lieutenant Governor of the Panjab, on the subject of tenant right, dated 13th September, 1866.

No. 512—397.

FROM

T. H. THORNTON, ESQUIRE,

Secretary to Government Punjab.

TO

THE SECRETARY TO GOVERNMENT OF INDIA,

FOREIGN DEPARTMENT.

Dated 15th September 1866.

REVENUE DEPARTMENT.

SIR,

I have the honor to transmit for the consideration and orders of the Right Hon'ble the Governor General in Council, copies of the documents noted in the margin, having reference to the subject of tenant-right in the Punjab, together with copy of Minute by the Hon'ble the Lieutenant Governor.

REVENUE.

Extract of a letter from Financial Commissioner, to Secretary to Government Punjab, No. 517, dated 14th October 1864.

Extract of a letter from Financial Commissioner to Judicial Commissioner, No. 3,736, dated 7th November 1864.

Report of the Preceedings of the Lahore Tenant right Committee—Parts I and II.

Letter No. 336, dated 26th May 1865, from Financial Commissioner, submitting the above report—and an additional Memo : drawn up by that officer.

By order, &c.,

Secretary to Government Punjab.

MINUTE ON HEREDITARY TENANTS.

It is known to the Governor General in Council, that enquiries have for some time past been in progress, on the subject of tenant-right in the Punjab,—and that a Committee was appointed to consider and report upon the subject. The proceedings of that Committee have been before the Government since June 1869; but have not yet been disposed of. The question is one which has a most important bearing on the interests and future prosperity of the largest class of the population, not only in the Punjab, but probably throughout all India; and it is, at the same time, one of much difficulty, and one regarding which there exist very great differences of opinion. The report submitted by the Committee is incomplete—and as much discussion regarding tenant-right have been taking place elsewhere, I have left the subject to lie over (which it would be unprofitable for me to attempt to dispose of) until the pending discussions should be brought, in some form, to a close.

2. It is now, however, in contemplation to introduce into the Legislative Council a Bill for amending Act X. of 1859, which is at present the guide for Bengal and the North-Western Provinces, in all matters affecting the rights of tenants.—The question of rights of occupancy in Oudh, has been definitively settled by the Supreme Government on the 24th ultimo,—and I have been recently favored with a copy of a Minute recorded by His Excellency the Viceroy on the subject, with express reference to the Punjab. This Minute I do not feel myself authorized to annex to this paper, without permission, but it will doubtless be available to the Supreme Government.

3. Under these circumstances, it has become necessary that the result of the enquiries made in this province be submitted, without further delay, for the consideration and orders of the Supreme Government;—and I present accordingly, to submit my own views regarding them, after having carefully considered the Committee's report, and the documents laid before them, together with the Financial Commissioner's letter submitting the report, and an additional memorandum recently drawn up by that officer, regarding the Jullundur Division, in which settlement operations have been brought to a close by Mr. Edward Prinsep, the officer who has conducted those operations. These are the documents upon which my own opinions have been chiefly matured, and on these principally, I propose basing the following remarks.

4. Before entering on the main topic, I think it right to offer a few remarks, on the permission given to Mr. Prinsep to revise the record of rights, as prepared by his predecessors—the propriety of that measure having been questioned, by many of those who have taken part in the discussion. Mr. Prinsep has pointed out, that on the 3rd May, 1861, the Financial Commissioner of that day, Mr. [illegible], in his instructions, wrote as follows to the Commissioner of the Jullundur Division:—"The Chief Commissioner is of opinion, that, wherever mistakes have been made in recording cultivators as hereditary or non-hereditary, the record should be carefully revised and amended." Thus it is evident that, from the first, it has been recognized in the Punjab, that this is a subject in regard to which errors were very likely to occur—and although very careful enquiries have since been made

MINUTE ON HEREDITARY TENANTS.

The importance and difficulty of the subject.

It is known to the Governor General in Council, that enquires have for some time past been in progress, on the subject of tenant-right in the Punjab—and that a Committee was appointed to consider and report upon the subject. The proceedings of that Committee have been before me since June 1865; but have not yet been disposed of. The question is one which has a most important bearing on the interests and future prospects of the largest class of the population; not only in the Punjâb, but probably throughout all India; and it is, at the same time, one of much difficulty; in regard to which there exist very great diversities of opinion. The report submitted by the Committee is incomplete—and as much litigation and discussion regarding tenant-right have been taking place elsewhere; I have felt the subject to be one which it would be unadvisable for me to attempt to dispose of, until the pending discussions should be brought, in some form, to a close.

The proposed law and the Viceroy's Minute of the 30th August.

2. It is now, however, in contemplation to introduce into the Legislative Council a Bill, for amending Act X. of 1859; which is at present the guide in Bengal and the North West Provinces, in all matters affecting the rights of tenants—The question of rights of occupancy in Oude, has been definitively settled by the Supreme Government on the 24th ultimo—and I have more recently been favored with a copy of a Minute, recorded by His Excellency the Viceroy on this subject, with express reference to the Punjâb. This Minute I do not feel myself authorized to annex to this paper, without permission, but it will doubtless be available to the Supreme Government.

All documents bearing on the subject, with the Lieutenant Governor's views, now submitted.

3. Under these circumstances, it has become necessary that the result of the enquiries made in this province be submited, without further delay, for the consideration and orders of the Supreme Government—and I proceed accordingly, to record my own views—annexing hereto, extracts connected with the formation of the Committee; their report, and the documents laid before them, together with the Financial Commissioner's letter submitting the report; and an additional memorandum previously drawn up by that officer, after he had visited the Amritsur Division, in which settlement operations have been now brought to a close by Mr. Edward Prinsep, the officer who has originated these enquiries. These are the documents upon which my own opinions have been chiefly matured, and on these principally, I purpose basing the following remarks.

The propriety of allowing revision of the record of rights.

4. Before entering on the main topic; I think it right to offer a few remarks, on the permission given to Mr. Prinsep to review the record of rights, as prepared by his predecessors—the propriety of this measure having been questioned, by many of those who have taken part in the discussion. Mr. Prinsep has pointed out, that on the 3rd May 1851, the Financial Commissioner of that day, Mr. G. Edmonstone, wrote as follows to the Commissioner of the Cis-Sutlej States:—"The Chief Commissioner is of opinion, that whereever mistakes have been made in recording cultivators as hereditary or non-hereditary, the record should be carefully revised and amended." Thus it is clear, that from the first it has been recognized in the Punjâb, that this is a subject in regard to which error is very likely to occur—and although very careful enquiries have since been made

in regard to it ; and the existing record of rights has been the result of these enquiries ; the conclusions arrived at have been far from uniform, and have been by no means universally accepted as correct.

The ignorance of the people of the nature of their rights at the first settlement.

5. The state of things existing in the Punjâb, for a long series of years preceding annexation, was such as almost to extinguish proprietary rights in land ; or at all events to deprive them of nearly all their value. The people, in consequence, possessed but very indistinct ideas in regard to these rights—so that the best security for a correct ascertainment of the rights and relations of the several classes connected with the land, was wanting. Matters have, in fact, been more or less in a transition state, from the commencement of our rule until the present time. The minds of the people have been gradually opening to the results ensuing from their altered position and greater security—the value of land has been constantly increasing—absentees have been from time to time returning—dormant claims have been revived—and new questions have necessarily arisen. In paragraphs 241 to 245 of the "Direction to Collectors of Land Revenue," the difficulty of preparing a really reliable record of rights, which has been experienced in our older provinces, is very fully set forth. And under these circumstances, it appeared to me that it would be altogether unreasonable, and productive of injustice ; if the conclusions arrived at by detached officers, at the very first regular settlements effected in this province, were to be accepted as binding for all time.

The qualification of the Settlement Commissioner for the work.

6. Mr. Prinsep was in consequence authorized; when revising the settlements of the Amritsur Division ; to review the existing record, by the light of the additional knowledge, obtained by our officers employed in all parts of the Punjâb, during 16 years of British dominion, testing the information thus supplied, by associating the people themselves, as largely as possible, in consultation with himself and his officers. He was known to possess very special qualifications for enquiries of this kind—and it appears to me hardly possible to over-estimate the value of his labors, as shown in the accompanying papers. He has rendered good service also, in having them printed, in anticipation of the orders of Government. And if the question of tenant-right in the Punjâb be now brought to a satisfactory decision ; I consider that this will be due to the untiring energy, zeal, and intelligence, which he has brought to bear upon it.

Compensation to privileged tenants more just than a perpetuity of occupancy rights.

7. I do not think that any one, who is free from preconceived prejudices, can peruse the accompanying documents, without arriving at the conviction, that there is an all but universal feeling on the part at all events of the more intelligent classes of the people, throughout this province, against perpetuity of occupancy rights, on the part of even highly favored tenants—but that there are nevertheless undoubtedly large classes of these, whose title to special consideration, is as universally acknowledged. The conclusion to which I have been in consequence irresistibly drawn, is, that an award of perpetuity is not the proper remedy for any wrongs inflicted on members of these favored classes—and that the just claims of all, (with a few exceptions to be hereafter explained,) may be most appropriately met, after precautions have been taken to guard against needless evictions, by awarding pecuniary compensation, commensurate with his claims, to any privileged tenant who may be deprived of his holdings.

8. It appears to have been heretofore generally assumed; that where superior tenant-right is proved, a title to permanent occupancy is necessarily established—and this view has been adopted in the enactments of our legislature. But I know not on what this assumption has been based—and believe that much of the diversities of opinion which have prevailed on the subject, would have been reconciled; if some measure, less irremediable than an award in perpetuity, had been devised—or one more capable of adaptation to the varying circumstances of different cases—than an inexorable law of perpetual incumbency can ever be rendered.

The right to permanent occupancy has been too readily assumed.

9. From a careful examination of the accompanying papers; aided by a personal knowledge of the province; I feel myself warranted in asserting, that the tenants of the Punjab may be suitably divid ed into 3 great classes :—

The three classes of tenants in the Punjab.

First, Those having rights but little inferior to those of proprietors properly so called. In parts of the Derajât more particularly, these are designated "Mâlik adna," or inferior owners; as contrasted with "Mâlik âla" or superior owners. The term "Hamsâyah Tawâni," or powerful neighbour, is also there met with. In the Rawul Pindee Division, they have been designated, on the suggestion of Mr. Edward Thornton, "Mâlik-i-makbûzah," or owners of their own holdings. In other parts, though not specially designated, their superior position has been recognised in various ways—some paying no rent at all—some paying by "Bâch," (or shares of the Revenue proportioned to extent of holding); though a somewhat higher rate than the proprietors proper—some being allowed share in the common lands; though this is rare—some being allowed to nominate their own "lamberdâr," or representative—and some enjoying other special privileges in regard to village sites, manure heaps, right to sink wells or plant trees, exemption from forced labour, &c., Many of these like the "Mâlik adna" of the Derajât, are no doubt sub-proprietors rather than hereditary tenants—some hold sub-settlements, like the ex-proprietors of Oudh—and it would, perhaps, be not inappropriate, to designate this class generally, as sub-proprietors rather than tenants.

Second. Those who have held their lands for long periods, or through several generations; or have reclaimed waste lands belonging to others, by their permission—but have usually no other special claim to adduce.

Third, Tenants-at-will.

10. The first of the above classes comprise, as a general rule, those who once were proprietors, but have lost their ownership; either from invasion, by the action of the ruling power, or from other cause. Those who are related by family alliance or otherwise with the proprietary class. Those who participated in the first founding of the village; though on an inferior footing to the proprietary body. Those who either now hold, or have heretofore held in jagîr or on rent free tenure, the lands they now cultivate. And those who have, from any other cause, been admitted by the proprietary body, or by the officers of Government, to special rights and privileges. Other illustrations might perhaps be adduced, but it is not necessary to be more explicit here. Suffice it to remark; that in so far as I am aware, this class

The first class, having right little inferior to proprietors.

has never; until recently in the case of sub-settlements in Oudh; been discriminated by our legislature from the second class—which is, I think, much to be regretted—as it appears to me impossible to deny that they they have a just claim to be specially legislated for.

Their position somewhat analogous to the English copy-holder.

11. This class of persons, it seems to me, should be regarded very much in the same light as "copy-holders" in England. Those only can claim this last named designation, whose names have appeared on the court roll "time out of mind,"—and although this period of incumbency can be claimed by but few in this province; the class to which I refer, appears to me to occupy here a very analogous position to the copy-holder of England—and seeing that perpetuity of occupancy has been accorded to the latter; albeit perpetuity of tenant-occupancy appears to be abhorrent to the spirit of modern British jurisprudence; I would certainly accord it to the corresponding class here; which, for the most part, appears to me to have at least equally strong claims to this privilege.

The position, however an undesirable one.

12. So great an evil, however, is the tenure of copy-hold considered to be, that great efforts have been made to open the way for putting an end to it. A select Committee of the House of Commons recorded on the 13th August 1838, their opinion; that it is "a blot on the judicial system of the country"—mainly, no doubt, owing to the uncertainty and harassing character of the demands to which copy-holders are subject—but also in view of the check to agricultural improvement, resulting from all permanent liens upon land. Five statutes at least have in consequence been enacted, during the present reign; to enable copy-holders to enfranchise their tenures, or convert them into freeholds—and it would, I think, be exceedingly desirable to hold out similar facilities to this highest class of tenants or sub-proprietors, in this country, to purchase for themselves the status of proprietors in full. This, however, is a matter on which it is not necessary to dwell here.

The second class of tenants and the protection to be afforded them.

13. As regards the 2nd class of privileged tenants noted above; I would propose, as already indicated—not that they be afforded an opportunity, like the first class, of redeeming the proprietary demands to which they are liable—but that if they be deprived of their lands, otherwise than on default, or failure of heirs; they receive a money compensation. So long as they pay the rents demandable from them, the proprietor should, in my opinion, be prohibited from ejecting them; unless some very sufficient reason can be assigned—such as that the land is required for the use of members of his own family—a plea which the accompanying papers show to be generally admitted to be a valid one, for resuming lands—nor should he be allowed to eject a tenant having strong claims; when the land of a tenant having inferior claims is equally available—while in every case, 2 or 3 years previous warning should be required.

The compensation to be awarded.

14. When it may be determined that the proprietor is justified in ejecting such privileged tenant; or the latter may agree to vacate; he should receive from the proprietor, such sum as will ordinarily suffice to enable him to establish himself elsewhere—due regard being had to the strength of his claim—and where the amount cannot be deter-

mined by mutual agreement, it should, I think, in every case be decided by arbitration. Five years profits on his lands, in addition to the cost of any improvements he has made, might perhaps to be fixed as a minimum—and 10 or even 20 years, as a maximum.

This compensation generally allowed to be proper.

15. That this principle of compensation, on ejectment from lands, though denied by some to be claimable in any case, is by no means contrary to the general opinion of what is fitting, or even to existing usage, is, I think, to be gathered from the accompanying papers.

(*a*) Major Mercer, Deputy Commissioner of Amritsur, states that in many cases, the proprietor " was bound by custom, to make an adjustment of accounts, for improvements made."

(*b*) Captain Maxwell, Deputy Commissioner of Multan, asserts that the proprietor " occasionally granted compensation for improvements made, clearances effected, or trees planted."

(*c*) Mr. Blyth, Deputy Commissioner of Gugaria, states that a cultivator who had broken up waste, could in some parts " claim an average rate for clearing and breaking up of land from its virgin state. The rate never exceeded 2 rupees."

(*d*) Captain Munro, Deputy Commissioner of Peshâwur, remarks that the terms of compensation for outlay " were arranged for by arbitration—the outgoing cultivator receiving what might be deemed a fair sum in lieu."

(*e*) The Battâla Committee, in answer to 3rd question, consider that " a system of payments to tenants as compensation, before eviction, should be sanctioned."

(*f*) In answer to 15th question of the same Committee, the tenants observed " if evicted we should certainly get compensation" (some said at the rate of 10 rupees the ghumao or acre).

(*g*) In reply to the 15th question put to Native officials, Extra Assistant Jaishi Ram suggested in detail, a system of compensation to be paid to tenants, who have held for several generations, remarking ; " one class would be held entitled to one fifth of the value of the land, before ejectment, another class to one-fourth—another to half—another to two-thirds, &c."

And so held to be by some of the best revenue officers.

16. It is certain also, that many of our best Revenue officers have heretofore formed the same opinion. Colonel Lake, Financial Commissioner ; the most thoughtful perhaps, and free from prejudice of all the officers who have adorned this administration, expresses himself, in the 28th para. of his memorandum accompanying, as in favor of such an arrangement—and adduces Mr. Cust ; who formerly officiated in that post, and is a Revenue officer of rare ability ; as advocating the " absorption or expansion of tenant-right, according as money was either paid or received." Mr. Prinsep also, it may be gathered, shares in this view of the matter ; at all events to some extent—while Major Cracroft, Settlement Officer

of Rawul Pindee ; in para. 303 of his report ; after remarking that it would "be very unwise to remove the protection of the State" from the hereditary cultivator ; proceeds to observe that it would nevertheless be very hard on the proprietor, when pressed for land to supply the needs of his family, that he should be prevented from occupying what was his own—using the expression "surely the right of the proprietor is prior to that of the cultivator of whatever status" —and he adds that "after deliberation with the heads of proprietary bodies, a clause has been inserted into the administration paper, declaratory of the right of the proprietor, by regular suit in the Revenue Court, to redeem land from the hereditary cultivator—making, for the latter, the best arrangement he can."—This officer, therefore, may fairly claim to have been the first to bring this principle into practical operation.

The direction of English legislation with regard to copy-holds.

17. It may not be inapropriate also here to remark ; that the suitableness of such arrangements in certain cases, is recognized in the recent legislation of the British Parliament, on the subject of copy-holds. For although the general aim of that legislation is to secure the gradual enfranchisement of the holdings of this class—and necessarily so, having regard to the extent and solidity of the prescriptive rights to which they have attained, yet in Act 15 and 16, Queen Victoria, clause 51, section 25 ; it is laid down, that when the enfranchisement of a portion of a copy-hold, would "prejudicially affect in enjoyment or value the mansion house, park gardens, or pleasure grounds" of the lord of the manor, arrangements are to be made, for the purchase by the latter of the tenant's interest in such portion.

The principle of compensation would be beneficial and readily accepted.

18. My own opinion is very decided ; that, while great and permanent dissatisfaction, as well as serious obstruction to progress, would result from declaring the occupany of the ordinary hereditary tenant to be permanent, this princible of granting compensation, on withdrawal of land, if prudently applied, would operate most beneficially—and be ready accepted by nearly all. No sudden or startling change would thus be introduced—the rules adopted would take effect but gradually ; and under circumstances which would enable the people themselves, in a great measure, to apportion the compensation in each case, in such mode as may appear to them appropriate. Seeing also how constant is the tendency in India to excessive sub-division ; and how rapid the progress of the country promises to be in population, as well as in agricultural, manufacturing, and commercial activity ; it appears to me to be a matter of no small moment, that the transfer from agricultural to other pursuits, in the more densely peopled parts, should be as much as possible facilitated.

The policy incumbent upon the British Government in India.

19. It is right on the other hand, as it appears to me, that we bear in mind how incumbent it is on us—cut off, as we necessarily are, from an intimate knowledge of the feelings, opinions, and requirements of the people of this land—to abstain, as far as possible, from sweeping legislation, introducing radical changes, calculated materially to affect the social relations of the people. The measure which I have proposed, would operate so gradually, and enlist so largely the co-operation of the people themselves ; that it would be exempt, in a great measure from this character—while to stereotype by law all existing hereditary tenures ; could not but be here regarded as a revolutionary measure. I am

strongly of opinion myself that it would also be one not only opposed to existing usage but inexpedient on abstract grounds.

The Minute of the Viceroy.

20. The above are all the remarks which I think it necessary to offer on the subject of right of occupancy—but it remains to be considered, in connection with this part of the subject, how it is to be determined to which of the foregoing classes each claimant belongs. His Excellency the Viceroy has, in the Minute above referred to, stated his views generally on this point—and although he has been pleased to state therein that he is prepared to give full consideration to any objections I may have to urge against the adoption of those views, I have no occasion to avail myself of this privilege as I generally concur in them. If, however, the discrimination of the two classes of privileged tenants, which I have urged above, be accepted; any detailed rules, that may be issued for guidance, will require additional clauses, prescribing the mode in which this discrimination shall be made.

Two generation a 20 years occupancy, preferable to shorter periods, as giving a little to hereditary tenure.

21. In that Minute, His Excellency has proposed that 20 years, or two generations of occupancy, shall be held to constitute hereditary tenure. This I consider greatly preferable to the shorter periods, which have heretofore been proposed and in some places acted on—and if it be conceded, as I have urged in the foregoing remarks, that an hereditary tenant, if not belonging to the most highly privileged class, may, on sufficient cause being shown, be ejected on payment by the proprietor of suitable compensation, I entirely assent to its adoption. By the Punjab Financial Book Circular No. 24 of 1858; it was ruled, with the Chief Commissioner's approval; that an individual once recognized as a tenant-at-will, cannot, by mere length of occupancy, alter his status. I presume that this rule will still hold good—and that the above proposal is intended only to have retrospective effect. To apply such a ruling to the future, must virtually prove inoperative, as no proprietor would deliberately allow a tenant-at-will thus to acquire hereditary privileges; unless it were his intention to confer these on him, which he is of course always at liberty to do—while its effect must be in the majority of cases, to beget constant apprehension of ejectment on the part of the tenant; and to prove detrimental to his interests in many ways.

Explanation of the Committee's recommendation "of a resort to a regular suit."

22. I think it as well here to explain, with reference to a remark in the above Minute, that where the Lahore Committee recommend a resort to "a regular suit"; they do not intend a suit in the Civil Court but a regular suit before the officers of the Settlement department; as contra-distinguished from the general enquiries necessarily made into the general constitution of a village, and the summary ascertainments of fact, resorted to in preparing the draft of khasrah or detailed record—and although any cases which may arise after settlement operations have been brought to a close, must necessarily be brought before the ordinary Civil courts; there can be no doubt that so long as settlement establishments are employed, it is incumbent on them, to dispose of all cases connected with land.

The conditions by which an hereditary occupancy tenure should lapse.

23. There is only one other remark, which I think it necessary to offer, in connection with this part of the subject—which is, that not only must hereditary right to held to cease, on a tenant spontaneously leaving his hands, without arranging for their culture on his own behalf—but that on the death of an

incumbent, collaterals shall not be entitled to succeed; unless it can be proved, that during the life of deceased they were dependent on his lands for their support. So that on failure of lineal heirs, or others thus entitled, an hereditary occupancy tenure will lapse. On all other points, I trust that I have above indicated, with sufficient clearness, the general principles which I would recommend—and if general principles be determined, I do not anticipate any difficulty in laying down detailed rules for guidance on all necessary points.

The amount of rent and the privileges of hereditary tenants.

24. It only now remains to consider the question of determining how it shall be settled in each case of hereditary occupance, what rent shall be paid—and what privileges hereditary tenants shall enjoy, during occupancy. But on this subject I think it only necessary to state, that as regards all or ordinary hereditary tenants, I agree generally to the methods laid down in Act X of 1859, in the amended form now proposed for that Act—with a few reservations only; which I shall state separately, when expressing my opinion on the proposed modifications—of these the chief are, that I would not debar the proprietor from a share of the profit resulting from improvements made by a tenant; or no wells will be sunk by the latter, nor any trees planted—and that instead of laying down arbitrarily $12\frac{1}{2}$ per cent, or 20 per cent, or any other fixed rate as that which is to be decreed in every case falling within any given category; a maximum and minimum shall invariably be laid down—if an explicit rule on this point be thought necessary—within which limits, it shall be fixed by arbitration, what precise rate shall be awarded. As regards those tenants who are specially privileged; I would desire to see special rules, of a more favorable character, laid down--an increase of rent in their case being allowed, only with reference to a fall in the value of money.

Summary of recommendations.

25. I will now briefly summarize the recommendations made in this paper.

First. That out of the class of hereditary cultivators, those be selected who are acknowledged, or proved to have claims but little inferior to the proprietary bodies—and that these be set apart, as a specially privileged class; who shall not be liable to ejectment, or enhancement of rent, save on very special grounds— and that every facility be afforded to this class, for gradually securing the enfranchisement of their tenures.

Second. That the remaining hereditary tenants be formed into a separate class; who shall be liable to ejectment only on sufficient grounds being shown—(such as that the land is required for culture by the proprietor himself) that ejectment even under these circumstances, shall not take place, without three years' notice—and that the ejected tenant shall then receive, from the proprietor, compensation; the amount of which shall be determined by arbitration. That such tenures, however, shall lapse on incumbent's vacating his land; or dying without lineal heirs, or others dependent on these lands for their support.

Third. That if these princples be approved; this Government be authorized to draw up rules for guidance of settlement and other officers, in determining the class in which each individual shall be included—the principles laid down in the Minute of his Excellency the Viceroy being generally followed—and 20 years or two generations of past occupancy being declared to confer hereditary title.

Fourth. That as regards fixation of rent, and privileges to be enjoyed during occupancy; the rules laid down by Act X of 1859, with certain amendments, be adopted, in respect to privileged tenants of the second class—a maximum and minimum however being laid down in every case, instead of a fixed rate—but that in respect to privileged tenants of the first class, no enhancement of rent be allowed; except with reference to fall in the value of money.

The remarks of this Minute refers only to the Panjab.

26. Although, on some points, the condition and usages of the Punjâb no doubt differ more or less from those of the North Weatern Provinces—yet on the whole, the two provinces greatly assimilate, in most matters connected with the land. It is quite possible, however, that pledges may elsewhere have been given, by the legislature or otherwise; which would preclude the adoption in other provinces of some of the proposals here made. In the Punjâb I do not consider this to be the case—and I should very much regret to see this province debarred from the adoption of an arrangement, otherwise considered beneficial, merely because it cannot be extended to the North West and Bengal—so that I would desire it to be understood that the remarks which I have made in this paper, are intended to apply to the Punjâb alone.

MURREE, (Signed) D. F. McLeod,

13th September 1866. *Lieutenant Governor Punjab.*

Documents accompanying Minute dated 13th September 1866, by the Lieutenant Governor of the Punjâb, on the "status" to be assigned to tenants having superior claims to consideration, as regards occupancy of the lands held by them; and the terms on which they shall be entitled to hold those lands.

PREFATORY REMARKS.

The Commissioner of Settlements of the Amritsur Division; shortly after he had entered on the task of revising the settlements of the three districts (noted in the margin) which constitute that Division; represented to the Financial Commissioner, that the "record of rights" as prepared at the late settlements, largely required revision, in respect to tenants entered as having a permanent right of occupancy; many having been recorded as having this right; who, in his opinion, had no title to it. The settlements of all these districts were "regular settlements"; in supersession of the "summary settlements" made at annexation, and had all been effected by officers specially selected for the duty, with great care and deliberation, that of Syalkôt having been the work of Mr. Prinsep himself, whose report is probably the most elaborate and original work of the kind, that has yet been published.

1. Amritsur.
2. Gurdâspûr.
3. Syâlkôt.

The Financial Commissioner, on a full review of the arguments adduced by Mr. Prinsep, concurred with him in the above opinion, and recommended to the Government of the Panjâb that a Committee should be formed; before which Mr. Prinsep should lay all the evidence and opinions he had collected on the subject, after fully considering which, and making any further enquiries they might deem called for; the Committee should report their views on the entire subject. This arrangement was sanctioned by Government; the Committee was convened at Lahore in the early part of 1865, and their report was submitted to the Financial Commissioner by the President, Mr. A. A. Roberts, with a letter No. 1,179, dated 5th May, 1865.

This report, and the documents laid before the Committee, have been printed by order of Mr. Prinsep, who has added, as Part II, some further papers and reports, connected with the subject, and all these documents, as thus printed, accompany in two separate files. Previous to the submission, however, of the report; the Financial Commissioner had drawn up a memorandum, after visiting the scene of Mr. Prinsep's labours; which he submitted to Government with a letter No. 137, dated 8th March, which memorandum very fully explains his views on the entire subject.

To supplement Mr. Prinsep's printed papers; an extract from the late Financial Commissioner's letter to Government recommending the formation of the Committee, is subjoined hereto, and extract from the letter of instructions addressed to the Committee, is followed by the memorandum of the present Financial Commissioner, Colonel Lake, above alludded to; and his letter No. 336, dated 26th May 1865, submitting the Committee's report.

Extract paras: 2 to 4 of a letter No. 517, dated 14th October 1864, from D. F. McLeod, Esquire C. B., Financial Commissioner Punjab, to the Secretary to Government Punjab.

2. The matter is one, however, admitting of great diversities of opinion, and in respect to which there have been great diversities of practice. In some cases, menials who have obtained land merely conditionally, in lieu of their fulfilling certain duties, have been declared to have permanent hereditary right of occupancy; in some, members of the porprietary body, who have been allowed to cultivate a portion of the common land, have been similarly recorded, which I believe to be opposed to the universal opinion and practice of the people. In others; where no lineal heirs have been left by a hereditary cultivator; nor any one dependent on the land he cultivated, for their subsistence; search has been made for collaterals; who have been installed in possession as his successors, a proceeding which is equally opposed to the sentiments of the people at large, and which is in my opinion wholly unnecessary and inexpedient.

3. But not only is there great diversity of practice in different districts, and under different officers; but there can be no doubt, in my opinion, that the course which has heretofore been often pursued even by our Settlement officers, in the preparation of our records; has been too much guided by pre-conceived ideas; whether borrowed from the practice of the North West Provinces or otherwise, rather than by ascertainment of the real feelings, wishes, and past usages of the people, and there appears to me to be very much that it is most desirable to re-consider and re-adjust in this matter. Mr. Cust endeavoured to attain this end, to some extent, by his proposed Tenant Code. But the subject is so difficult and delicate a one; that it has not yet been fairly grappled with, and no final orders on his proposals have yet been passed.

4. Many opinions were collected in connection with this subject by my predecessor, more by myself, and now Mr. Prinsep has added largely to the stock. To deal authoritatively with the mass of opinions thus collected, many of them conflicting—appears to me to be too responsible a task to impose on any one person. And I venture therefore to suggest, that a Committee of officers of experience be appointed, to report on the matter through this office, for the orders of Government.

Extract para: 6 of a letter No. 3,736, dated 7th November 1864, from D. F. McLeod, Esquire, C. B., Financial Commissioner Punjab, to A. A. Roberts, Esquire, C. B., Judicial Commissioner Punjab, communicating the authority of the Punjab Government, for the formation of a committee to report on the question of hereditary tenants, and nominating a president.

6. Having been struck heretofore with the close analogy between copy-holders in England and hereditary tenants in India, an analogy first pointed out to me by Mr. A. Brandreth I was led, by a perusal of the remarks on the subject of copy-holds entered in the late edition of Stephens' Commentaries, to send for the Acts of Parliament of the present reign, which relate to the enfranchisement of copy-holds. These are available for reference, if desired by yourself or other members of the Committee. But although they may not be found materially to aid you in your deliberation; it certainly does appear to me, that in addition to the points which Mr. Prinsep appears to have taken up, where there are two parties having permanent rights in the same land, the question of facilitating and encouraging the purchase by either party of the rights of the other, is one well worthy of your consideration.

Memo. by Colonel E. Lake, Financial Commissioner of the Punjab, on the "status" of cultivators in the districts of the Umritsur Division. (Enclosed in a letter to Government of the Punjab, No. 137, dated 8th March 1865.)

Having recently made a tour through the districts of the Umritsur Division, in which revision of settlement is now being effected under the direction of Mr. Edward Prinsep, I deem it right to place on record the observations I have made regarding the "status" of certain parties who at the last settlement were recorded as tenants with a right of occupancy.

2. I may observe at the very outset that the class of landed proprietors throughout India occupy a position in some respects so subordinate to the State that some writers have contended that the Crown is the real proprietor of the soil. Without entering into this moot question, it is sufficient to draw attention to the fact that the Government exercises the power

of fixing what proportion of the net produce of the soil shall be taken by the proprietors as rent (see para. 7 of the prefatory remarks to Direction to Revenue Officers) and what proportion shall be taken by the State as revenue. In theory, the Government share, which is now one-half, was formerly two-thirds, and in practice is more or less, according as the settlement officer has rightly estimated the assets of the estate which he has assessed. It may be added that, as a rule, the Government demand is much more moderate under the British than under the Sikhs, who often absorbed the whole rent and reduced proprietors to the same level as cultivators Thus, while on one hand the proprietors held their land on a tenure which was inferior to that of proprietors in civilised European countries,* the cultivators in many instances were in a position far superior to that of tenants in those countries. Indeed very frequently the privileges and rights enjoyed by the two classes were so very similar that it was exceedingly difficult to determine whether it was right to reduce one to the subordinate position of cultivator; and even in villages where a dominant proprietary brotherhood existed, it was found that owing to the pressure of the Government demand during the Sikh rule, some of the proprietors had lost the management of their own lands, the profits and losses on which for a series of years had accrued to the cultivators.

3. The terms of land-lord and tenant with which we are familiar in England, applied to the classes so called in the Punjab, are calculated to lead to erroneous impressions and unjust conclusions, if we do not bear in mind that, in the Punjab at least, while the proprietors occupy a "status" which is inferior to those of the same class in England, the cultivators, not always, but sometimes, hold a "status" which is far superior to that of tenants in England.

4. There were therefore not wanting good reasons for maintaining a class of favoured tenants in the Punjab, even if such had not been recognized under the revenue system introduced by the British Government in other parts of India; great difficulty however was experienced in discriminating between the tenant-at-will and the tenant who was entitled to protection, and instead of determining this point after careful enquiry for each holding into the relations heretofore existing between the proprietor and tenant, settlement officers frequently looked mainly, if not entirely, to the length of time the tenant was in occupation, and an uninterrupted occupancy of twelve or twenty years was considered sufficient to confer the right of occupancy. The subject had been pressed upon the attention of Mr. Prinsep at an early stage of his proceedings, by the proprietors, who complained of the unfair depreciation thus caused to their estates. Mr. Prinsep (whose investigations are always very thorough and very complete) then took the opinions of mixed committees of landlords and tenants, of experienced native officials who have been for some years in the Punjab, and of influential intelligent men like Rajah Sahibdyal, as to the relations which formerly existed and which ought to exist in future between landlords and tenants. The valuable information thus obtained has been recorded in a series of papers which deserve attentive perusal.

5. From these Mr. Prinsep has deduced that, by the former custom or usage of the country the proprietor had an undoubted right to evict his tenant whatever might be the circumstances under which the land had been obtained.

6. I do not myself agree in this deduction, for if reference be made to the evidence of Rajah Sahibdyal it will be observed that if even in theory the proprietor had this right, in practice in some cases he either did not exercise it or was prevented exercising it by the Government officer of Kardar; and in further proof of this, I would refer to the number of tenants still to be found in the Punjab who it is admitted have held their lands from time immemorial or from the first formation of the village itself.

7. Indeed if we bear in mind what has been the past history of the Punjab, we must be prepared to find great diversity of usage. First there was a period when the Punjab was eagerly contended for between Mahomedans and Sikhs, then when the Sikhs became dominant the country was parcelled out among the chiefs of the Sikh confederacy who during these struggles had come to the surface: and lastly came the rule of Maharajah Runjeet Sing, who delegated the revenue management of the country either to farmers or kardars. During the first period there was much anarchy and misrule, under which the ordinary restraints of a settled Government were naturally relaxed; and under the Sikh rule which followed, the chiefs and their kardars were not actuated by any desire to settle the relations between landlords and tenants on any fixed principles of abstract justice, but rather to adopt that arrangement which secured immediate benefit or promised enhanced revenue at some future time.

* If a proprietor in India expends capital in sinking a well or otherwise improving land, instead of obtaining the entire benefit of this outlay himself, as he would do if he held his land on the same tenure as proprietors in Europe, he has by immemorial custom to pay more revenue to the State because his lands have been rendered more productive.

8. During the century and a half which preceded our rule in the Punjab, the relations not only of the landlord and tenant but of other classes, were determined by the will of the local ruler of the time being* rather than by any reference to law or custom; thus, when now an attempt is made to regulate succession to a disputed estate by reference to previous customs, it is often found that well authenticated precedents can be adduced for two customs in the same family, the one directly opposite to the other, and the explanation for this is that during this period the will of individuals superseded both law and custom.† Thus if a proprietor was influential and wished to oust his tenant, he was permitted to do so; if on the other hand the proprietor was poor and the tenant industrious, the right of eviction was denied.

9. If it be urged that the preponderance of the evidence now adduced before Mr Prinsep is in favour of the proprietor having a power of eviction in all cases, I would reply that the sense of the country is in many matters in direct antagonism to the system recognised by the British Government. Thus, those who were brought in contact at the commencement of British rule with the agricultural population of the Punjab, will bear me out in saying that the law of limitation, by which the claim of the ousted proprietor was often barred, is quite opposed to their sense of what is right and wrong; and when some of the influential head men of villages in the Manjha were consulted on the subject, they proposed that the period of limitation should be sixty-five years instead of twelve. Further it will be observed that some of the members of the Battalla Committee, while admitting the power of the proprietor to evict, add that it would be great injustice to exercise the power against tenants of old standing, excepting the proprietor wanted the land for his own cultivation. This is a very important reservation, which should not be lost sight of.

10. When it is remembered that in some cases the tenants' ancestors came to the villages when it was first formed, that they reclaimed the land they now cultivate from the waste, that their holding has been regarded as any other patrimonial property and divided accordingly among heirs, that by their industry they have done much to improve the land they cultivate, and that when the pressure of the Government demand had so reduced the value of land that proprietors were glad to surrender it, some of these tenants fulfilled for a long series of years all the engagements and liabilities of the proprietors;—it does not appear either equitable or just to arm the proprietor with a general power to evict them. The tenants depend ordinarily for their livelihood on the profits of cultivation: if therefore they are evicted from their lands, and have on this account to go elsewhere, the dwelling houses in the village in which they have lived for generations, and other agricultural holdings, will be of no use to them, besides which they will have all the expense of moving; and what is the prospect before them! they must go to some other village as tenants, liable to summary eviction from year to year. It will I think be a reproach to us if tenants who were located in their villages under the Mahommedan rule, or whose tenure has survived the Sikh dynasty, are now compelled by our policy to emigrate and to become wanderers on the face of the earth.

11. But to return to Mr. Prinsep's operations, a full account of which is given in his letter No. 595, dated 16th September 1864 to the address of the Commissioners of Umritsur and Jullundhur, his enquiries, as far as they had gone by the end of November 1864, into the holdings of 10,770 persons recorded as hereditary tenants at the last settlement in seven purgunnahs of the Goordaspur and Umritsur Districts, showed that only 2,086 were entitled to that status and although the great majority of the others it is proposed to protect by leases of shorter or longer period, the fact still remains that a very great majority of those who were recorded hereditary tenants at the last settlement are considered to have no right of occupancy at all.

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* The system adopted by Dewan Sawun Mull in Mooltan may be adduced in illustration of this. Many of the old proprietors there were too poor to cultivate the whole of their estates, and accordingly their surplus lands were made over to men with more capital and enterprise then themselves, with the understanding that they should pay manorial dues to the ex-proprietors. In this way thousands of new wells were sunk in Dewan Sawun Mull's time, and an enormous area of waste land was brought into cultivation.

† In a postscript to a report written by Sir Henry Lawrence on the summary settlement of Khytul, the following observations are made :—

"The fact is that the Sikhs have neither rule nor custom that can be referred to as the unchanged or "undisputed guide of any branch of their community. In general and in many matters of form they profess to go by the Shasters, but being a people of yesterday and having gained everything by violence "within the last century they have not had time to settle down and to make laws of inheritance or any "other laws; some sort of rules appear it is true to have been from time to time patched up, but in "such time and among such a people the law of the sword was the only one recognised." (See extracts from Reports on the Settlement of the pergunnahs formerly; comprised in the Tanesur district, published by this office.)

12. That very great errors were made on this point at the last settlement I have no doubt. It was chiefly left to the putwarrees to determine who were hereditary tenants and who were tenants-at-will, the people themselves did not understand the terms, the proprietors were not so well off as they are now and were glad to get tenants who would engage to meet the Government demand on the lands they cultivated.

13. It is equally certain that the procedure introduced by Mr. Prinsep for ascertaining the tenure of each tenant is far superior to that adopted at the last settlement, and is the best possible that could be devised under the circumstances. He appoints assessors, selecting an equal number from landlords and tenants, from among those who happen to be present at the time, and these assessors give in their award regarding the tenure of every tenant in the estate. This procedure is not however free from objections; for instead of enquiry being confined to the "status" of those who the proprietors urge were wrongly recorded at the last settlement, the tenure of every tenant is brought under review. Assessors too are apt to be influenced by the social position of the parties whose rights they are called upon to adjudicate, thus if the proprietor was an influential chowdree and the cultivator a sweeper, I would always predicate at the hands of assessors a verdict in favour of the proprietor.

14. I am bound however to confess that during my recent tour I attested the awards of assessors in some fifty or sixty villages and only in a few isolated cases did either tenant or proprietor complain of the terms which had been conceded to them. In some tracts, like Puthankot, where the tenant's subordination to the proprietor has been always strictly preserved, and where the tenants have not been admitted to a direct management of their holdings, they quite scouted the idea of maintaining their occupancy against the will of the proprietors, but I may add that as in this tract land is plentiful and population is sparse, the tenants in practice will enjoy fixity of tenure however we may record them.

15. Indeed, I observed throughout that European officers appear to be more interested in the question than the parties themselves, who do not yet recognise its importance or all its bearings, and except in those cases in which owing to disputes the relations between landlords and tenants have become embittered, I believe that ordinarily they are ready to come to terms.

16. In matters of this kind it is not easy, and it is not desirable, to lay down general rules, for exceptional cases will arise in which the application of these rules would not be just or expedient; but with this reservation, I concur with Mr. Prinsep in the conclusions which he has deduced on the following points:—

1st. That no shareholder in a common property has right to occupy as hereditary cultivator of any portion of that common holding.

2ndly. No shareholder cultivating the land of another shareholder of the same estate can be considered a hereditary cultivator.

Of the persons referred to under the second sub-division, many will be found who ought to have been recorded proprietors instead of hereditary cultivators, and the first ruling ought not to be applied to the land in common holdings which has been divided among the heirs of the person who first occupied the land and held by them for twelve years without question. In such cases, instead of being recorded hereditary cultivators, they will be entitled to be regarded as proprietors.

17. I do not concur with Mr. Prinsep in the following conclusions:—

1stly. That no Paheekasht tenant has right to occupy as hereditary cultivator.

2ndly. That non-resident tenants have no right to a privileged occupancy.

3rdly. That village servants have no right to occupy as hereditary cultivators.

18. As regards village servants, I think Mr. Prinsep is under a misapprehension when he states that they rented lands under conditions of village service. Formerly land for cultivation was so little in demand that to be allowed to rent land was not considered a privilege, and village servants were paid by a fixed rate on ploughs or produce, which was received irrespective of any land rented by the servant. Ordinarily, village servants and non-residents would have to make out a stronger case to entitle them to the privilege of fixity of tenure. But with this reservation the same grounds which entitle other tenants to consideration will hold good in their case.

19. Another conclusion of Mr. Prinsep, that no tenant can be exempted from payment of rent by order of Court, would be indisputable if the "tenant" referred to was an ordinary "tenant," such as the tenure is in civilised European countries. But that the tenure of land, both of proprietor and tenant in the Punjab, is somewhat different from that in European countries, I have already mentioned; and to show that I am not singular in entertaining this opinion, I would call attention to the testimony of other officers. In a letter No. 588, dated 3rd May 1853 to Commissioner and Superintendent Trans Sutlej, the Financial Commissioner, then Mr. Edmonstone, writes as follows :—

"According to my own experience in the Cis-Sutlej States there was under the Sikh rule "little distinction between proprietary and hereditary cultivators; both paid their rent ordinarily "in kind, for some crops in cash, but in both cases at the same rates; both contributed to the "village expenses, and the extraordinary cesses which were exacted; and the only difference was "that the proprietor usually received a small "*inam*," either in land or money, from which the "hereditary cultivator was usually, though not invariably, debarred, and possessed certain "privileges, such as that of excavating wells, &c., which were denied to the hereditary non-"proprietary cultivators. If therefore prescription were followed, we should create a new class, "partaking of the character of both the proprietary and the hereditary cultivator."

20. Mr. Edward Prinsep again, in para. 375 of his Sealkote Settlement Report, describes a class of tenants of whom :—" the right merged more into that of a subordinate proprietor, "he became a co-partner for the time not only bearing the liabilities but enjoying all the profits "as a proprietor. It has nowhere been traced that parties in the position of the first class (of "tenants) however, paid proprietary dues to anybody, while from the other classes rent charges, "under the name of 'biswee,' 'malikee,' 'ismee,' were universally taken, under the grain system, "and made over to the proprietor at the time the Government account was struck. But "proprietors openly declare that every class of tenants could be evicted at will, when the land "was required by the landowner for his own use."

21. I need not multiply extracts, for the experience of every officer in the Punjab will bear me out in saying that there are cultivators in the Punjab, whose tenure partakes somewhat of the character of a proprietor as well as of a tenant, and it is to this class that our courts have some times decreed exemption from the payment of rent.

22. Mr. Cust, in his able letter regarding tenants, denounces this in the following terms :—" for a tenant who can never be called upon to pay rent is an inconsistency; converted "into a sub-proprietor, he is the owner of an intelligible property." Mr. Cust, and Mr. Prinsep—who follows in his wake in this matter—have both overlooked that in declaring this class of tenants sub-proprietors they invest them with the power to sell, mortgage and transfer the lands they cultivated, which it is admitted on all hands they never exercised before; and however anomalous it may seem to rule that a tenant shall pay no rent, the "*status-quo*" of the parties was by this more strictly maintained than it will be by the expedient which Mr. Cust has devised. In point of fact, the class of tenants referred to should be regarded as Crown tenants, for to the proprietors of the village in which they resided they had ceased to be subordinate, and the kardar or the Government through its representative had been to them for a number of years in the place of the proprietors. If in regarding these cultivators as Crown tenants my views are deemed fanciful, I would draw attention to the tenure known as "*Warisee*" in the Kangra district, described by Mr. Barnes in his Settlement Report, in which lands descended from father to son, and yet the occupants of these holdings did not claim or exercise the power of alienating them, which is the essence of property. This tenure appears to me to assimilate more with the tenure of Crown tenants than with any other with which Englishmen are familiar.

23. It will be urged that it would be more expedient to convert all such Crown tenants into sub-proprietors, and that this has been done in the Kangra hills. The question of expediency it is for Government to decide, and in Kangra there were no rival claimants to the proprietorship; but in deference to what may be called the policy of the old Punjab school, I may observe that it not only preserved in all its integrity the "*status quo*" of the parties, but also maintained the reversionary interests of those who were unquestionably the former owners of the land, and who in many cases lost their rights in consequence of the pressure of the Government demand.

24. It will be understood from the foregoing remarks that I do not coincide with those whose views pushed to an extreme would do away altogether with the tenure of hereditary cultivators, at the same time I think the fewer there are the better, and that they ought to be allowed to improve their lands by sinking wells, as in the N. W. Provinces.

"The enquiry is not carried out in an isolated way but in one sitting. The whole village "being present for the attestation of the records, opportunity is taken to adjust these relations. "A statement is prepared for each village, landlord and tenant confronted in open court, before "the community and their representatives. Where they come to terms the relations fixed upon "are recorded. Where they refer to the punchayet, the award of the latter is entered. There is "scarcely any interference on the part of the judicial officers of the department, and no arbit-"rary rules are laid down. The local customs are recognized and reduced to record, and the "verdict is tested by reference thereto.

"The punchayets are not partial juries, and no one has it in his power to make arrange-"ments with them for a partial decision, as it is a strict rule to select the members at random "from the crowd at the time (not before) of the actual sitting for enquiry into their status; "and the enquiry being in open court before the whole village, it may be allowed that certain "guarantees are secured against wrongful awards."

7. If the awards of the juries thus appointed by Mr. Prinsep are accepted, then out of 10,770 persons recorded as hereditary cultivators at the last settlement only 2.086 are entitled to that "status," and most of the others ought to be regarded as tenants-at-will.

8. The rights of so many persons of an important class appeared to be at stake that, shortly after I assumed charge of this office, I determined to march through the districts undergoing revision of settlement, and the conclusions at which I arrived were recorded in a memorandum dated January 1865, the copy of which was forwarded to your office with my No. 130, dated 8th March 1865. I beg that memorandum may be first perused, as unless this is done this report will appear incomplete, and the remarks which follow unintelligible.

9. By your office letter No. 987, dated 26th October 1864 orders were issued for the formation of a committee of officers to report on the subject of the "status" of hereditary tenants in the Punjab, but owing to various causes the officers composing this committee did not assemble at Lahore till early in January. An admirable account of what took place at their meetings has been prepared by Mr. Griffin, from some rough notes he took down at the time. To this statement and the report submitted by Mr. Roberts, the President of the committee, I must refer His Honor the Lieutenant Governor for the conclusions at which the committee arrived, as well as for their detailed proceedings.

10. The first issue raised was whether a Settlement Officer could legally alter former entries made at the last settlement regarding tenants with a right of occupancy and acted upon without question for ten years And the conclusion arrived at by the majority was, that the record could be legally amended if parties interested consented, and if in disputed cases the entry was proved to be erroneous in a regular suit to be instituted by the person who wished the record to be altered, but that it was both unnecessary and unwise to review every case as had been done under the special procedure adopted by Mr. Prinsep in the Umritsur Division.

11. With reference to Mr. Roberts' remarks marginally noted, I cannot refrain from noticing, that if the law as it at present stands, empowers a Settlement Officer "*proprio motu*" to alter all the entries of a previous settlement under Regulation VII of 1822, there is nothing to prevent all those tenants who were first recorded hereditary cultivators, and who are now regarded as tenants-at-will by Mr. Prinsep, from being recorded tenants with a right of occupancy at the next settlement twenty or thirty years hence, should that settlement be conducted by an officer entertaining views on this question similar to those held by Mr. Melvill and some other members of the committee. It is obvious that a record of rights which can legally be entirely recast at the discretion of the settlement officer whenever a revision of settlement takes place, ceases to be a "charter of rights to which all persons having an interest "in the land or seeking to acquire such interest are to appeal." If therefore this is the law it is a question whether it ought not to be amended.

"There can be no doubt therefore of the competency of the Settlement Commissioner to correct the former records; but on reflection, I do not think the decision of the committee, that in disputed cases no amendment of the previous record should be made without a regular suit, is correct."

12. Under the Punjab procedure (Book Circular 33 of 1860) a formal entry in the settlement record must be called in question by a regular suit within twelve years from the date of the final English report of the settlement officer, and any claim to set it aside after that date would not be entertained. I consider therefore, that as the law at present stands

in the Punjab, the conclusion of the majority of the committee was correct, for although I myself doubt the legality of some of the provisions of Book Circular 33 of 1860, until these are formally abrogated we are bound to abide by them.

13. The second issue raised was on the question of fact, as to whether numerous errors had been made at the last settlement; and in support of this Mr. Prinsep adduced the reports of Settlement Officers and District Officers, from which it appeared that cultivators having right of permanent occupancy had no existence whatever in Sikh times, and were a creation of the last settlement. He also referred to the result of the enquiries made by himself, already referred to by me, into the holdings of 10,770 persons.

14. For the discussions to which this issue gave rise, I would refer to Mr. Griffin's report, but I may be allowed to observe that if the arguments adduced by Mr. Prinsep are valid, then the tenure of hereditary cultivators or cultivators with a right of occupancy should cease altogether, not only in the Umritsur Division, but throughout the Punjab, and as far as I am informed throughout the North Western Provinces, for the tenure of these cultivators in both provinces is very similar. If pre-existing usage is alone to be considered, and that usage is so well established, as the evidence adduced would show, that the landlord has the power to evict all his tenants without distinction, it appears to me a mere waste of time to prepare an elaborate Tenant Code or a schedule with the minute details of that framed by the Settlement Commissioner, as the basis for a Tenant Code.

15. And here, at the risk of repeating what I have already said in the memorandum to which I have refered, I may state that the terms of landlord and tenant as familiar to us in England are likely to mislead when applied to the classes we have to deal with in the Punjab, whose relations to each other we are now called upon to determine.

16. If His Honor the Lieutenant Governor will refer to the several settlement reports quoted by Mr. Prinsep, he will observe how very general the testimony is, that on the advent of British rule the so called privileged tenants were found occupying a "status" so similar in all respects to proprietors that in some cases it was difficult to distinguish between them. The Sikh Government had not, it is true, by any formal proclamation, such as was issued recently by Lord Canning in Oude, confiscated the rights of proprietary classes, but by a settled policy, persistently pursued for years, it had effectually confiscated all such rights, and during this time the burden upon the land was so heavy that the obligation was not on the part of the proprietor who gave the land, but on the part of the man who took the land on the condition of meeting the Government demand upon it. Under our settled Government with its moderate demand, land is so much prized that we are apt to over-look that a very different state of things existed when these privileged persosn obtained their holdings.

17. Some of these so-called tenants, for instance, began to cultivate when a considerable portion of the country was waste, and when labour was in much greater demand than land. The district of Googaira is at present in that condition, and from the subjoined description of the Settlement Officer of that tract, Captain Elphinstone, we may form some idea of the relations formerly existing between the classes of the so-called proprietors and tenants.

"The distinction between hereditary and non-hereditary cultivators is a creation of "our Government. Under the native rule in this part of the Punjab it was altogether un-"known. Proprietors had the right to eject any tenants whom they disapproved of, however "long the latter may have resided on the estats. It is remarkable, therefore, that the cultiva-"tors should in some portions of the district, notwithstanding their uncertain tenure, have had "the right to sell the "kasht," or cultivation of land; instances of such a right being acknow-"ledged frequently come under the cognizance of the Settlement Courts. This claim to sell "the right of cultivation was always founded on the fact of the claimant having been the first "plougher of the soil. It was, therefore, of some importance, when determining the position "cultivators were to occupy, to ascertain to whom the claim of "Bootey mar." or first plough-"ing of the land, belonged. In accordance with instructions issued on this subject by superior "authority, all cultivators who could make out their claim to the "Bootey mar" were recog-"nized as hereditary cultivators, a privilege also conferred on those who had cultivated for "8 (eight) years, if residents in the village, and twelve (12) years if non-residents. Land, "however, is so abundant and the population so scanty, that I have never found proprietors "object to have their cultivators entered in any class the latter might prefer themselves. The "privilege of being a "mouroussee," or hereditary cultivator, is by no means highly prized, "facility of removal being the chief object aimed at. Now the idea is very prevalent among

"them that, by becoming hereditary cultivators, they may ultimately be made responsible for "the Government jumma in case of failure on the part of the proprietors; a belief which has "probably been strengthened by the fact that Tehseeldars, during the summary settlement, "often realized from the cultivators themselves. It is not very surprising therfore that cases "should frequently occur in which this privilege of becoming hereditary is most strenuously "declined, to the despair of the proprietor, who in the desire of his *assamees* to become non-"hereditary recognizes a sure indication of their being prepared to leave his village whenever "superior temptations shall be held out to them by his neighbours."

18. If with our light assessments proprietors are not only ready but anxious that the holdings of their tenants should descend from father to son, how much more must they have desired this when they were rack-rented by the Sikhs; and if the mere fact of his being the first plougher of the soil entitles a man to sell his tenure, what shall be said of the proposal to reduce to the status of a mere tenant-at-will a man whose ancestor not only reclaimed the soil but met all the revenue engagements of the proprietor, when he was unable to do so himself, and who transmitted it to his descendants as an heritable property, and who in the assurance of their tenure being a fixed one have expended capital in building houses and agricultural buildings.

19. It is noticeable that with the Settlement Officers who first came to the Punjab the issue raised was, not whether the so called tenant should be evicted but whether he was not entitled to the "status" of proprietor. In illustration of this, I would subjoin the remarks of Mr. Wynyard, the Settlement Officer of Umballa :—

309. *Rights of Tenants.*

"I have stated above, that I have not experienced much difficulty in deciding the "amount of rents to be paid by the tenants, but numerous and somewhat difficult cases have "arisen turning on the question, who is a tenant and who is a proprietor. As I have before "observed, the Sikhs made no distinction between proprietors as a body and tenants. With the "exception of one or two headmen, or favored individuals, all were treated alike. Zemindars "and Asamees were alike made to pay the high rents demanded of them ; nor were matters "much mended under our early revenue administration. Now however when the khewut and "khuteonee are carefully read out in the village, and thoroughly explained to the people, and "when they understand that the Zemindar has to pay only two-thirds of the rent, whereas the "tenant has to pay the whole, in short when they understand that we acknowledge the difference "between proprietors and tenants, the latter persons, who have hitherto been in as bad a position "as the Zemindars, who have not engaged for the Government revenue, think that they ought "now to be placed in an equally good position, and have urgently pressed their claims to be "admitted as proprieters. Each case has been tried, either by punchayet (jury) or on its merits, "and separately disposed of; many of the claims are utterly futile, and founded solely on "length of possession, which though it does give a right to continued occupancy, without "enhancement of rents, gives him no right whatever to a share in those rents.

"I have never failed to keep this distinction clearly before me, and to urge on the officers "working with me, the great difference which exists between a right to possession of land at a "fixed rent, and a right to hold lands paying only the share of jumma due for those lands. The "admission of tenants to the proprietary right is a certain way to weaken the responsibility of "the brotherhood.

"310. And yet it is not easy to dismiss the claim of a man who has for years been "bearing up against heavy assessments, and paying his share with the proprietary brotherhood. "He is entitled to praise and consideration, but he is not entitled to another man's birthright, "and I have thought it quite sufficient, if he is not one of the bhyachara, to record him as a "tenant, and to fix, if he requires it for his protection, a money rental, 30 per cent in excess "of the revenue rents."

20. This and other Settlement Reports and the experience of every officer who has enquired into the tenures of the Punjab will bear me out in saying that, while on the one hand property in the European sense of the term has been created by the British Government in the Punjab, on the other hand there are to be found in almost every village a class of persons who had been in uninterrupted occupation of their holdings, which they had transmitted like any other heritable property from father to son, and for which either no payment was made to the so-called proprietor, or, if payment was made, it was of the nature of the dues for lands of copy-hold

and customary teuure in England to the lords of manors, rather than of those paid by tenants to proprietors. Indeed, I believe much of the complication which has risen in connection with this question may be traced to our having recognised only two classes, one of proprietors and the other of tenants subordinate to those proprietors whereas, in point of fact, many of these men if tenants at all were tenants of the Crown, and not of the so called proprietors, to whom their relations had never been those of tenants in England, but rather of under proprietors to lords of the manor, with this marked distinction, however, that they were not ordinarily allowed to sell their rights and interests.

21. It is important to bear in mind that the origin of these proprietary rights were in a large majority of cases a grant of waste land from the Crown, without any very distincts specification of term; but with a clear understanding on both sides, that all but an insignificant portion of the rent should be paid to the Crown. Now that a more liberal policy has been introduced by our Government, and the profits of proprietors have been largely increased, I do not think it would be just or expedient to arm them with a power to evict from house, home, and lands, those whose tenure in former times was scarcely inferior to their own, and by whose superior industry, in many cases, the proprietors were saved from utter ruin.

22. Mr. Prinsep's remark would convey the impression that, subsequent to the issue of letter No. 1010, dated 11th December 1855, from the Secretary to the Chief Commissioner to the Financial Commissioner, west of the Chenab the "status" of hereditary cultivator was determined on considerations similar to those now advocated by himself, and more equitable than those followed in other parts of the Punjab. Taking this for granted, it is somewhat remarkable that in the Rawul Pindee district no less than 2,09,045 acres of land are in the hands of those who under the present settlement are recorded tenants with a right of occupancy, in other words more than one quarter of the entire cultivated area of the Rawul Pindee district is in the hands of tenants of this class. This shows a very different result from that obtained by Mr. Prinsep's operations, under which probably not more than five-thousand holdings will remain with hereditary cultivators in the three populous districts of Goordaspoor, Sealkote and Umritsur.

23. I have stated in my memo. my belief that very great errors were made in the first settlements in admitting too readily the claims of hereditary tenants; and by actual attestation in fifty or sixty villages, I have satisfied myself of the correctness of the alterations of entries proposed by Mr. Prinsep in those villages; at the same time, if the flow of the tide of opinion set in formerly in the Punjab too strongly in favour of the class we have called hereditary cultivators, there is great danger lest the ebb of the tide, which has now set in as strongly in the opposite direction, should leave them stranded and ruined.

24. On my recent tour through the Sealkote district I asked a large number of proprieters whether nothing short of the power of eviction would meet their interests, and whether some course could not be followed which would be more considerate to the tenants. Their reply was that they would be quite satisfied if they were allowed to collect their dues in kind. This reply convinces me that it is not so much the power of eviction which the proprietors claim as a fair rent from their cultivators, and it is because under a system of grain payments they obtain this rent that they are so anxious to revert to it. In the last regular settlement of the Umritsur Division in many cases no rent at all was fixed, and in all cases the rent fixed was quite inadequate—and hence probably has arisen much of the discontent evinced in this matter by proprietors, which, however, I believe will be quite allayed by increasing their rents.

25. In cases however when privileged parties had by a judicial order of court been exemped from the payment of any proprietary dues, I do not think they ought now to be demanded in deference to a theoretical notion that no tenant should be exempted from the payment of rent because in point of fact these parties were not tenants in the ordinary acceptation of the term. I may also remark that in addition to the cases actually adjudicated at the last settlement, there may be found others who have never paid proprietary dues, and whose "status" entitles them, in like manner to exception.

26. In the schedule of relations existing between landlords and tenants drawn out by Mr. Prinsep, and laid by him before the committee, the terms proposed for evicted tenants are considerate; but, as explained in my memorandum, I object to class distinctions by which village servants are placed on a different footing from others, for it is a mistake to suppose that lands were made over to them to cultivate on condition of performing service; they were remunerated in other

ways for any service rendered, and their tenure of the land, of which it is now proposed to regard them as tenants-at-will, often dates from the first foundation of the village, when, as in Googaira now, labour was in greater demand than land, and the proprietor felt under an obligation to any one who would reclaim the land for him.

27. Subjoined is a list of correspondence which has passed regarding tenant rights in the Punjab, to which I would refer for a full exposition of the views of those who have taken part in discussing this important question, the best solution of which in the Punjab appears to be to legalize the action of our courts, with the view of their affording facilities to either party desirous to improve the land for purchasing the rights and interests of the other. If as I have stated we found proprietary rights in the Punjab confiscated, and we have not only restored them, but vastly improved them, we may attach our own conditions to a restoration made under such circumstances; and for so doing we appear to have precedents in the legislative action which has been taken from time to time in England "for the commutation of manorial rights "in respect of lands of copy-hold and of customary tenure and for facilitating the enfranchisement of such land and for the improvement of such tenure."

LAND-LORD AND TENANT RIGHTS.

Extracts from Financial Commissioner's Revenue Report for **1865-66.**

Land-lord and Tenant rights.

82. The Financial Commissioner will not follow Mr. Prinsep in all his remarks on the Tenant question, which has been discussed in a separate correspondence, and on which perhaps too much has already been written. With reference however to Mr. Prinsep's observations in para. 101 of his report, the correspondence referred to above will show that the Financial Commissioner has prominently noticed the admission by tenants of their subordination to proprietors, and all other matters which tend to support Mr. Prinsep's views. Indeed Mr. Prinsep and the Financial Commissioner are of accord in many points. Thus, the Financial Commissioner agrees with the views expressed by Mr. Prinsep in his Sealkote Settlement Report, that of the holders of land whom we have constituted tenants there are many who may be regarded as holding it on the tenure of tenants-at-will, while there are others for a long time resident in villages whose occupancy was not often disturbed, and who enjoyed special privileges. Further, that of this latter class there were some whose right verged more into the tenure of a subordinate proprietor than of a tenant. Although Mr. Prinsep now argues that a larger experience has led him to modify the opinions expressed by him in 1863 in the report referred to, still by his revised settlement arrangements, 15,547 holders of land are declared to have a right of occupancy of whom 6,490 pay no rent; as however at the last settlement 60,350 were shown in the record as entitled to fixity of tenure, of whom 24.707 paid no rent, the real question at issue is whether a larger or smaller number of persons are in equity entitled to the privileges which it is admitted belong to a class whom we called hereditary tenants. The local enquiries made by the Financial Commissioner led him to the conclusion that many had at the last settlement been recorded hereditary tenants who did not even claim the right of occupancy, and further the correctness of the alterations which Mr. Prinsep wished to make was tested by personal enquiry in some fifty or sixty villages. Accordingly, the Financial Commissioner took upon himself the responsibility of authorising Mr. Prinsep to enter in the revised record the "status" of tenants as ascertained by more recent enquiries. As' however this revised "status" was determined, not after careful judicial investigation, but by the verdict of assessors, which from various causes is liable to error, Mr. Prinsep assumes too much when he takes it for granted that, in every case in which an alteration has been made, his record must be right and the former record wrong. In his Report of 1864-65 Mr. Prinsep admitted—see para. 35—that some cases might appear "deserving of reconsideration"; but he appears now to think (see para. 77) that besides those who have been maintained by him in the enjoyment of prescriptive occupancy, "the rest are without doubt erroneously entered." The Financial Commissioner is under the impression that holders of land entitled to fixity of tenure are more numerous than would appear from Mr. Prinsep's enquiries, and he bases this conclusion, amongst other evidence, upon facts (not opinions) adduced by Mr. Prinsep in his Sealkote Settlement Report, para. 377 of which is quoted below :—

Resident cultivator treated with much indulgence.

"377. Prior to Sikh rule, when Runjeet Deo held sway over the upper half of the districts, it is alleged that if tenants had cleared the soil and cultivated for two generations, dispossession could not take place except with the support of the authorities, and proprietors, so long as they received their dues, abstained from doing so. This distinct right, however, was lost sight of during

the anarchy that followed the appropriation of the country by the Bungee Sirdars. Each Jagheerdar or Kardar did what he chose, and a custom of this kind would naturally decline under a system that levelled all classes under grain payments, when little attention was paid to order, and everything squeezed out of the cultivators; *still it is remarkable how numerous are the occupants who have held their land for even two and three generations, and how readily their right to hereditary occupancy has been admitted by the proprietary body in general.*"

Enhancement of rent during time of Settlement.

83. In paras. 78—84 of his Report the Settlement Commissioner takes exception to the rule laid down in the Punjab Civil Code, under which the rent of the hereditary cultivator cannot be enhanced within the term of settlement. In favour of this rule (where the settlement is not for a long period) it may be urged, that the experience of European countries has shown the great advantage of giving long leases to tenants, and that the framers of the Punjab Civil Code have only authoritatively prescribed the policy which enlightened land-lords in England adopt in the interests of themselves and their tenantry, and provided that some reservation is made for cases in which the produce or the productive power of the land has been increased otherwise than by the agency or at the expense of the cultivator, the Financial Commissioner believes that the maintenance of this rule is calculated to promote the prosperity of the agricultural classes. For while, under another system, a good deal of litigation arises, which embitters the relations between land-lords and tenants, under the Punjab rule a periodical adjustment of rents is effected by the settlement authorities, who are specially qualified for this difficult and delicate task. The objections to this rule, now raised by Mr. Prinsep, were previously urged by Mr. Cust when he held the office of Financial Commissioner, and on several occasions he directed that a claim for enhancement of rent should be entertained, thus over-ruling the law contained in the Punjab Code. The Financial Commissioner is glad to find that in the amended Tenant Code now under consideration, it is proposed to enact that after a decision fixing the rent of a cultivator, no fresh suit will lie (except in special cases) until the expiration of ten years. Thus, the principle of the Punjab rule is adopted, and it is admitted that "something of this kind is required to give fixity to the tenant's interests." It is of course to be regretted that on a large number of holdings held by tenants not entitled to exemption, no rent at all was fixed at the last settlement effected of the Umritsur division. The proceedings of officers who make the first settlement of a new country should be reviewed with forbearance, for it is not to be wondered at if mistakes are made. The Financial Commissioner therefore does not condemn them; at the same time, if any one is to be blamed for the errors against which Mr. Prinsep inveighs, it must be the Settlement Officers; and in the case of the Sealkote district, Mr. Prinsep himself. On this point however the subjoined extracts from the Sealkote Settlement Report will show that good reasons were assigned for the procedure then adopted. From this extract it would appear that a larger area was held in the Sealkote district without payment of rent than is shown in the returns now rendered.

Proportion of land bearing rent charges.

"384. Again, out of 47,346 tenants, cultivating 1,79,073 acres, from only 27,432, occupying 1,18,315 acres (a little more than one-half), has the payment of "malikana" in some shape or other, been demanded by the proprietors."

Some tenants pay no "rent," and the reason of this.

"385. The only way I can explain this is by the fact that, in the remaining tracts not mentioned in para. 267, viz. throughout the Churkuree mehal, Kalur and southern villages of 'Deghundee,' comprising the greater part of the two Tehseels

Duska and Pusroor, *there was no malikana ever levied during the Sikh rule.* The country is peculiar in many ways as I have remarked before. Land without irrigation is valueless, property consists essentially of water. It is created and maintained by a great outlay of capital. The people are poor, weakened in numbers, and reduced in circumstances. The cultivated area is in excess of the proportion of population needed to keep up its status. I am inclined to believe, owing to the forced system of increasing cultivation, fostered under Sikh rule, these irrigated villages were kept very much more under the direct management of kardars and Jageerdars, than what obtained elsewhere. We know that they constantly made deductions from the revenue of from 25 to 50 rupees for the repair of wells, and took half butai rates everywhere; charging sugar-cane at 16 rupees and even 24 rupees per ghomao. It can easily be conceived how any one that applied received permission to restore the wells, reclaim the land, and cultivate it. Thus, though the villages mainly belong to brotherhoods, and some tribe is reckoned the superior proprietor, yet several strangers came to occupy the wells, and though they were not considered proprietors in the view of original right, they enjoyed the same footing as that of proprietors bearing a share of the burdens, paying no malikana, providing for the cultivation, and sometimes even repairing the wells at their own expense."

84. It is however unnecessary to pursue this subject further, more particularly as it has been fully considered in all its important bearings by His Honor the Lieutenant Governor, and His Excellency the Viceroy, and final instructions will probably shortly issue which will admit of its settlement with due regard to the interests of both the classes whom we have called land-lords and tenants, and who are both entitled to our best consideration.

1862.

EXCISE DEPARTMENT.

REVENUE—

The Secretary to Government

Proceedings No. 15.

1867

FOREIGN DEPARTMENT.

REVENUE—A.

No. 140.

To

The Secretary to Government, Punjab,

Dated 30th April 1867.

Proceedings, May,

No. 15.

With reference to Nos. 397-512 and 518-643, dated respectively the 15th September and 3rd December last, forwards, for information, copy of a Minute recorded by His Excellency the Governor General in Council on the subject of tenant right in the Punjab, and requests that this question be definitely and finally decided at the earliest possible date.

Occupancy rights in the Punjab.

No. 15. From the Secretary to the Government of India, Foregin Department, with the Governor General, to the Secretary to Government of Punjab,—No. 140, dated Simla, the 30th April 1867.

REFERRING to your letters marginally noted regarding Tenant right in the Punjab, I am directed by the Right Hon'ble the Governor General in Council to forward, for the information of His Honor the Lieutenant-Governor, copy of a Minute recorded by His Excellency on the subject; and to request that His Honor may be moved to give effect to the views of the Governor General in the manner therein laid down.

No. 397-512, dated 15th September.
No. 518-643, dated 3rd December.

2. His Excellency in Council deems it to be of the most urgent importance that this question, which has been so long unsettled, and regarding which extensive operations have been in progress without due authority, should be definitively and finally decided at the earliest possible date.

Minute by His Excellency the Right Hon'ble Sir J. Lawrence, Viceroy and Governor General of India, dated 30th April 1867.

No. 397-512, dated 15th September.
" 518-643, " 3rd December.

THE papers marginally detailed, on the subject of Tenant Right in the Punjab generally, and in the Umritsur Division in particular, have been for some time under consideration, and it appears to the Governor General now advisable to add the following observations to those contained in his Note of 30th August last.

Summary of the opinions of the Lieutenant Governor of the Panjab.

2. The Governor General believes the following to be a fair expression of the Lieutenant-Governor's own conclusions on this deeply important matter. They are either stated categorically in His Honor's Minute of September 13th, or are to be gathered from his agreement, tacit or explicit, with the sentiments expressed elsewhere in these papers :—

(1.) That, by the operation of general, and often arbitrary, yet varying, rules, laid down by the several Officers engaged in the first regular settlement of the Punjab, many tenants were (there is reason to fear) given rights as against their landlords, which are supported neither by existing facts, nor by the sympathy of the people themselves.

(2.) That though the Settlement Commissioner, Mr. Prinsep, was (in the eyes of the Committee assembled at Lahore in January 1865) in error, when at the revision of settlement he undertook to make a wholesale enquiry into the rights of all hereditary tenants already recorded as such, yet it would be at least equally inadvisable in case of dispute to prohibit enquiry on the ground that it was barred by the previous record.

(3.) That therefore, whenever, but only whenever, the correctness of the former record is impugned at the revision of settlement, an enquiry should be instituted and the status of the tenant recorded afresh.

(4.) That,, as far as possible, whenever the former record *is* impugned, the status of the tenant should be fixed by mutual agreement: whenever that is impossible by award of arbitrators: but that, as there must of necessity be many cases in which, by neither of these methods, will there be an escape from litigation in Court, some clear Rules for the decision of disputes of this kind must be laid down for the guidance of the Settlement Officer and Revenue Courts.

(5.) That for the purpose of framing some such Rules all tenants in the Punjab may be divided into three classes:

i. *Quasi* proprietors, with rights but little removed from those of full proprietors.

ii. Long resident tenants, say men who have cultivated for 20 years or two generations, and men who have reclaimed waste land.

iii. Tenants-at-will.

(6.) That tenants of the first class should be protected not only from eviction, but even from enhancement of their rents, except under very special circumstances, such, for instance, as a fall in the value of money; but that, on economic grounds, every facility should be given to these men to enfranchise their holdings, and thus secure the absolute separation of rights and interests.

(7.) That a certain degree of protection should also be given to tenants of the second class; they should, that is, be guarded against eviction, unless the five following conditions be fulfilled:—(*a*) (presumably) that the eviction be by decree of Court; (*b*) that it be shown to the satisfacion of Court that the land is *bonâ fide* needed for the landlord himself; (*c*) that no tenant of less prescriptive right than the one ousted, and therefore more immediately liable to eviction, exists in the village; (*d*) that two or three years warning be previously given; (*e*) that such compensation be allowed as will enable the tenant to establish himself elsewhere.

(8.) That they should also be protected against enhancement, except on the principles contained in Sir W. Muir's draft Bill for the amendment of Act X., a few slight modifications being made.

(9.) That in all such cases the term of prescription entitling a tenant to protection should have retrospective and not prospective effect; that a cultivator once entered, that is, as tenant-at-will, should not be allowed by mere length of occupancy to alter his status.

(10.) That the conditions of the protected tenures being thus laid down the remaining question, under which of the three classes each individual claimant is to be brought, may be decided on the principles laid down in the Governor General's Minute of 30th August last.

H. E. doubts whether the two classes of protected tenants might not be conveniently merged into one.

3. In these conclusions the Governor General agrees, with the following exceptions:—The case of the absolutely protected tenants, who form the first of the Lieutenant-Governor's three classes, not having been contemplated by the Governor General, he suggested in his Minute of 30th August no test according to which it might be decided whether any individual claimant belonged to this, and not to the 2nd class. And the Governor General would keep it still an open question whether, if on consideration of the observations that follow, it be finally decided to give tenants of the 2nd class a fuller degree of protection than the Lientenant Governor's present conclusions would allow them, the two classes might not conveniently be merged into one.

And objects to the 7th and 9th Conclusions of His Honor.

4. But it is to the 7th and 9th of the Lieutenant-Governor's conclusions that the gravest, and, indeed, the only serious, objections are felt. To the 7th, which would deny to a tenant, however long he might have held the land—whatever exertions he might have made to improve it, more than a partial security against eviction; and to the 9th, according to which the conditions entitling a tenant to even this limited degree of protection must have been fulfilled before his case came on for investigation and record at the time of settlement, so that if at that time his term of tenancy was found to be even only a few years short of the period prescribed, he would remain for ever a tenant-at-will; and, further, that no new tenant could ever hope by any exertion, by any length of cultivating ocupancy to acquire a security from capricious ejectment.

5. The objections are, in each case, twofold. The one regards the practical working, and the other the principle of the proposed alteration in the existing system.

The objections are twofold.

6. Thus great difficulties, and what is far worse, great uncertainty, would attend the practical enforcement of the checks on eviction proposed by His Honor in the 7th conclusion. In a suit for repossession brought by a tenant, the Court could hardly ever pronounce absolutely that the land-lord did *not* want the land for himself, or that there was *not* in effect some tenant with a liability to eviction prior to that of complainant. Again, the exact amount of compensation which would adequately represent the cultivator's interest in his holding must ever be a matter of the most varying and often the most conflicting opinions.

The checks on eviction could with difficulty be enforced.

7. Next as to the principle, as far as the evidence before the Government of India goes, the proposed change would appear to be an alteration, not only in the system adopted since the British rule was introduced into the Punjab, but also in the system which was in force before.

Not sufficient warrant for the proposed change.

8. The Governor General cordially agrees in the sentiment expressed by the Lieutenant-Governor in the 19th paragraph of his Minute: " It is right.........that we bear in mind how incumbent it is on us—cut off, as we necessarily are, from an intimate knowledge of the feelings, opinions, and requirements of the people of this land—to abstain, as far as possible, from sweeping legislation introducing radical changes calculated materially to affect the social relations of the people."

H. E. agrees with the Lieutenant Governor's view of the policy of Government.

9. The recognition of this valuable truth must be held to limit the discussion of such a question as the present to this single issue—what were the existing facts before the advent of British rule? Economic considerations may seem to dictate the expediency of altering the relations which one class bore to another; but the use of such arguments is precluded on the ground, that as it is impossible for Government to feel certain that the altered relations will suit the peculiar and scantily known necessities and notions of the people for whom it is legislating, so it is wisest to avoid as far as possible all meddling with the framework, which was brought to its present shape by the mutual action of the different elements of native society when left to themselves.

What were the facts before British rule.

10. With this rule in mind it is not necessary to search for *rights* which, needing a legal tribunal for their enforcement, cannot be supposed to have had any existence during a state of things when force was the only law; nor yet for traditional *customs*, regarding the precise nature of which the best informed authorities are often most at variance. The one thing needful is to enquire what status the several classes of society did actually possess during the period under enquiry, and how far each was, as a matter of fact, secured against the encroachments of the others.

Uncertain rights and customs should not be too much regarded.

11. Thus, in the particular case now under discussion, the point of enquiry would appear to be, not whether the landlord had the *right* of evicting, but whether he *used*, as a matter of fact, to evict. If from motives of self-interest, from the wish to surround himself with a force of ablebodied retainers, or with the view of obtaining assistance to meet the extortionate demands of the fiscal, (authorities) or from dislike of outraging the feeling of the neighbourhood, or owing to the positive commands of the Sikh Kardar, the landlord refrained as a rule from ejecting his long resident cultivators; and if therefore such cultivators were led to look forward with some confidence to the unmolested enjoyment of their holdings; then it will be most unadvisable now to deny them as a class the same absolute security from eviction which they enjoyed of old. It is true that, even if the landlords be now given the most complete power of ousting their tenants, still, in all probability, for some time to come they will refrain from exercising it. But if the value of landed property continue to increase as rapidly as it has of late, the time must soon come when it will be the landlord's interest to turn out the long resident and substantial cultivator in favour of others, who, being in needier circumstances, will consent to pay higher rent. When this becomes general there will follow that radical alteration in the relations between the two classes, that subordination of one class and exaltation of another, which, according to the rule above laid down, is to be condemned.

The question is not whether the landlord had the right to evict, but whether he did evict.

12. There is a similar objection to the other (the 9th) of His Honor's conclusions. If it be decided that up to this time length of occupancy has, as a matter of fact, shielded a tenant from eviction and capricious enhancement, then, as this was not the result of any artificial structure of society emanating from the governing power, but sprang spontaneously from the necessities and interests of the two great agricultural classes, it would seem to be a breach of the rule already adopted to decide that it should not be so for the future. To do so would, the Governor General conceives, be exactly that "introduction of radical changes calculated materially to affect the social relations of the people," which His Honor so strenuously and so justly deprecates.

Objection to H. H.'s 9th conclusion.

13. Too much force, moreover, appears to have been sometimes allowed to the objection, that, if length of occupancy shall be held to entitle future tenants to protection, the landlord will have a direct inducement to cut short the period of tenancy before the full term reaches completion. It is right, the Governor General holds, that the landlord should still have the power of checking the growth of subordinate rights in his own lands—an object which, it is to be observed, he will always be able to attain by the simpler and gentler expedient of giving a written lease with a distinct stipulation on this head. But, indeed, it is not the landlord of the time being, under whom the tenant is gradually acquiring occupancy rights, that will be tempted to nip the term of prescription in the bud before it has reached maturity. As it is right that *he* should have this power, so it is unlikely that he will exercise it. Those who will be tempted to get rid of the long standing tenant, are the successors of the landlord under whom the right originally grew up, and the new men into whose hands his lands may have passed by alienation.

One objection against a prescriptive term met.

14. The practical objection also to the restriction proposed by His Honor appears insuperable. If it were put in force, how would the Courts decide in future upon a complaint of ouster

The practical objection to H. H's; restriction.

preferred by the tenant? The landlord would plead that the complainant had not been twenty years in possession when the settlement record was made. One of two alternatives must then be adopted. Either the Court must throw upon the cultivator (that is, upon the weaker of the two parties) the onus of proving that he had been in continuous occupation for a period of twenty years before a certain date, which might by that time have receded far into the past (a course which no Government could view with satisfaction); or else all suits of the kind must be barred *in initio* by such a searching and complete registration of all rights, as would afford a Court of Justice a sure basis for concluding that, if the particular right claimed was not recorded therein, it could not have been in existence at the time.

A general registration unadvisable.

15. But there appear to be the best reasons for doubting the feasibility, and even the advisability of any such general and searching registration.

And opposed to the principale laid down.

16. In the first place, the measure would be diametrically opposed to the principle laid down in the 3rd of the conclusions detailed at starting. Instead of allowing the record of previous settlement to stand in every instance in which its correctness was not distinctly impugned by one or other of the parties affected, there would be a general and wholesale inquisition into the status of every tenant whether recorded at the previous settlement or not—a measure which, from its disturbing effect, has already been condemned in the Governor General's Minute of August 30th, and previously by the Lahore Committee in January 1865, with, as the Governor General believes, the concurrence of the Lieutenant-Governor also.

Nor does it seem practicable.

17. But in the next place, it does not appear that either the means at the disposal of Government or the circumstances of the case are such as to allow the Governor General to hope that any unimpeachable registration of tenants' rights could be made. The *personnel* of the large establishment that would be required for the purpose must be absolutely above suspicion of corruption; quite without previous bias in the matter; able and willing to devote to the hearing of each man's case nearly as much time as would suffice for a regular suit on the right affected; and capable of giving shape and expression to the vague claims and indistinct representations of the ignorant cultivator. Such qualities are certainly found united in a few gifted native officials, but for such the Government of India, has full employment in more urgently important tasks than this; and it seems chimerical to hope that men of these high qualifications could be found in such numbers as to supply the large staff of assessors, arbitrators, and supervising Officers that would be required in each district. As far as the arbitrators are concerned, indeed, it is from the very nature of the case not to be supposed that an impartial body of men could be selected from the materials available. Every local resident, of however high character, must, from his connection with one or other of the two agricultural classes, have a bias in this particular matter. A body of men thus necessarily biassed by class interest one way may be confronted with another body biassed the other way, and the two together may be styled a bench of arbitrators. One set may be outvoted, and the other may carry their point; but no Government could allow the interests of a large class of its subjects to be disposed of in this way.

18. If the men whose interests are touched were higher in the scale of enlightenment, the work of registration might perhaps be committed with safety to somewhat inferior instruments; but the cultivators of the Punjab, though frugal and industrious, are quite incapable of looking into the future, utterly ignorant of the force of our records, and even of their own admissions, and wholly unable to conceive that they will ever have to look to Courts of law for that protection, which has hitherto been secured to them by their landlords' necessities.

The people are too ignorant to understand the force of their own admissions.

19. Herein lies the explanation, of the apparent success of Mr. Prinsep's experiment. He has set on foot a system of general inquisition into *all* tenant rights allowed at the former settlement. The result is, that, of a body of 60,000 men then recorded as having rights of occupancy, the status of no less than 42,000 has been altered for the worse; and Mr. Prinsep relies much on the tacit acquiescence of the men themselves, as proving not only the need, but also the feasibility of such a general re-opening of the question, and fresh registration of all previously admitted rights. But it is easy to conceive that men so little gifted with foresight would submit to any change in the mere paper record, ordered by superior authority, so long as, owing to the self-interest of the landlords, there seemed no immediate prospect of the loss of their ancestral holdings. Moreover, in the case of nearly 30,000 of these men, Mr. Prinsep has spared them all present necessity of asserting their claims, by giving leases for a limited period of years, or for one or more generations, and has thus relegated to a distance, more or less removed in the uncertain future, the occasion on which they, or probably their posterity, may come to feel the effects of the acts and admissions of to-day. And, lastly, the argument drawn from the acquiescence of tenants now; is deprived of all force by the reflection that no less indifference was, at the last settlement, shown by the landlord—of course, a far more generally intelligent and wide-awake class—to records by which, on Mr. Prinsep's own hypothesis, the value of their property was unjustly curtailed. In this, as in the former case—indeed in all such instances—the alteration is viewed as the act of superior authority, and accepted accordingly without a murmur.

Hence the apparent success of Mr. Prinsep's experiment.

20. The Governor General therefore would suggest to His Honor the Lieutenant-Governor the advisability of calling for further evidence, and inviting a further expression of opinion on the points above noted. If, during such further discussion, the subject is approached from the point of view noted in paragraph 19 of this letter, which is, indeed, the one favored by the Lieutenant-Governor himself, the Governor General entertains no doubt that he shall be able to agree with the final conclusions which His Honor may adopt.

Further evidence to be called far.

21 The method of investigation the Governor General leaves wholly to the Punjab Government; but, as His Honor may think it expedient to entrust the decision of the question, in whole or in part, to a Committee, similar to that which assembled at Lahore two years ago, the Governor General would observe that though no further discussion is needed on those conclusions of the Lieutenant-Governor to which special exception has *not* been taken, yet with regard to the two main points excepted, the province of such a Committee would be nothing less than to fix the principles upon which the decision of our Courts in all disputed claims of the kind might be based in future. To enable the Government of India to accept recommendations on a point of such importance, something

The method of investigation and the points to be considered.

more is needed than the expression of individual opinions. If again bodies of native gentlemen are consulted, it will not be sufficient to accept their opinion when it is merely a selection (without reason assigned) of one or other of two diametrically opposite opinions adduced. This description applies to many of the conclusions which Mr. Prinsep's Buttala and Umritsur Committee pronounced on the conflicting claims of the proprietors on the one hand, and the tenants on the other: and the circumstance has deprived their award of much of the weight which otherwise the Governor General would have assigned to the judgment of those, who, more than any other class of men, must of necessity be in possession of the very facts on which alone a sound decision can be based.

SIMLA,
The 30th April 1867.

(Sd.) J. LAWRENCE,
Governor General.

QUESTIONS AND REPLIES

ON THE SUBJECT OF

TENANT RIGHT IN THE PUNJAB.

CIRCULAR No. 2—328.

FROM

T. H. THORNTON, ESQUIRE,

SECRETARY TO GOVERNMENT PUNJAB.

To

ALL COMMISSIONERS AND SUPERINTENDENTS,

PUNJAB.

Lahore, the 29th May, 1867.

SIR,

By desire of the Hon'ble the Lieutenant Governor, I forward herewith 10 copies of a paper of questions relating to the important subject of tenant-right, now under the consideration of the Government.

2. I am to request that you will be good enough to furnish replies thereto yourself for the information of His Honor, and to invite replies from the more experienced of your English and Native subordinates, and from some of the more intelligent members of the native non-official community.

3. In the case of Natives unacquainted with English, the questions should be carefully explained to the examinants and their replies recorded in English.

4. The replies should be obtained and transmitted with as little delay as possible.

I have the honor to be,

Sir,

Your most obedient Servant,

Secretary.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolestde enjoyment of their holdings ?

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the entervention of our Courts or otherwise ;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts ?

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not ?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *boná fide* needed for the proprietor himself.

(3.) That no tenant of less prescriptive right then the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for inexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, would be advisable?

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

Replies to the 1st, 2nd and 3rd questions on the subject of

TENANT RIGHT IN THE PUNJAB.

DELHI DIVIISON.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Lieut. Col. W. McNeile, C. S. I., Commissioner—Has served eleven years in the Punjab (actual service).

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, but this resulted solely from considerations of his own interest on the part of the proprietor, and that where he required the land for his own use, he did not hesitate to evict.

3. Is ths same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, even to a greater degree.

DELHI DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

D. Fitzpatrick, Esqr., Offg. Deputy Commissioner—Has had few opportunities of observing the relations between proprietors and tenants in the Punjab proper. His experience is derived chiefly from what he has observed in the lately annexed jageers and petty States in Delhi territory.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, but is of opinion that the forbearance on the part of proprietors was the result chiefly of economical considerations, for the *power* of turning out cultivators of this class was one little likely to be exercised under native rule.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, they were regarded in the same light as cultivators who had been long in possession.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Rae Bunsee Lal, Extra Assistant Commissioner—Has been employed in revenue and settlement work since the earliest days of British rule.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated

2. Yes, but this arose entirely from the great demand for labor and its scarcity with reference to the area available for cultivation. This sometimes led to proprietary rights being

for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

conferred on tenants. Where the latter had the support of the ruling powers the proprietor was powerless to evict.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, cultivators who had reclaimed waste land had higher rights, they would often be on the footing of proprietors.

GOORGAON DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Lieutenant. Col. J. M. Cripps, Deputy Commissionr—Has served eighteen years in the Punjab, was for some time employed in Settlement operations in the Ferozepore and Goorgaon districts.

2. So far as your observation and knowlege extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations. And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, as long as the tenant paid his dues to the proprietor. Adds that the right of occupancy was admitted by the body of proprietors.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, even to a greater extent.

KURNAUL DISTRICT.

1. What oppotunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Captain J. Parsons, Deputy Commissioner—Has had 10½ official experience in different parts of the Punjab.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Proprietors as a rule had no power of eviction. This power was exercised by the Kardar alone, who disregarding *all rights*, proprietary or otherwise, was guided in these matters solely by the desire to obtain the largest possible returns from the land.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Reclamation of waste lands by cultivators *at the instance* of proprietors was not held to confer on the tenant a right of continued occupancy, but proprietors could not themselves interfere, as their right to the land prior to its reclamation was not admitted under the Sikh Govt.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Sham Lal, Extra Asst. Commr. Has served since 1847 in all parts of the Punjab.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Prior to annexation no rights existed, might was right. The Govt. officials did what they liked, proprietors and tenants were both in their hands and could not expect unmolested enjoyment of their respective rights.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Moonshee Mithun Lal, Extra Asst. Commr.—Has served in all parts of the Punjab.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. No, when proprietors required the land for their own use they did not hesitate to evict. Adds that in former days there was practically little or no distinction between proprietors and tenants.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Proprietors had no control over waste lands, which were considered the property of the State and could only be reclaimed with the permission of Government or its representatives.

HISSAR DIVISION.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

J. Naesmyth Esquire, Commissioner—Has served in both upper and lower Punjab since December 1850.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, and tenants of long standing were greatly encouraged, and by the grant of extra ordinary privileges were induced to remain and assist the proprietors in the cultivation of the soil. Hence the anomaly of "*Shamil back*" tenants, who are numerous in the Rohtuk and Hissar districts.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

Hissar District.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Capt. J. Forster Offg. Deputy Commissioner—Has served for eleven years in the Punjab Commissioner.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Has no remarks to offer as this question refers to a period prior to annexation.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Ditto, Ditto.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Syud Jumal Ali, Extra Assistant Commissioner—Is a resident of the Punjab, and has been in the service of Government since annexation.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, the State being exacting in its demands and land plentiful and of little value proprietors, desirous of raising as much produce as possible naturally hesitated to turn out tenants, who so materially assist them in meeting the demands of the State.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

Peer Buxsh, E. Assistant Commissionr. Has been employed in the Punjab since annexation.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, land was of little value prior to annexation, and the proprietors glad of any assistance they could obtain to meet the exactions of the State tax gatherer; hence tenants of long standing were not evicted, and in practice there was little difference between the position of proprietor and tenant.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Ditto, ditto.

ROHTUK DIVISION.

Major J. Fendall, Dy. Commissioner—Has served six years in the part of the Punjab to which the replies relate.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes the proprietors tried by all means to attach to themselves a tenantry on whose support they could rely, and hence refrained from eviction—even in the case of tenants whose occupancy was quite recent.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Reclaimers of waste lands are the growth of the English system of cash payment (*Question apparently not understood.*)

C. W. Lennox, Esquire, E. A. Commissioner—Has served for many years in the Punjab.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods say 20 years or two generations? And were such tenants,

2. Yes, proprietors refrained from eviction of tenants, whether the latter had cultivated for years or for generations, because under native rule the realization of the demand from the proprietor was the last resort, the "*asami*" paid it by "*buttai*" or "*kunkoot*"

as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

and bore all the responsibility. Land having little value its possession was not coveted by the proprietor, no distinction was recognized between hereditary occupants and tenants-at-will.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Easy terms for a fixed period, generally ten years, were given to tenants who reclaimed waste land, after the expiration of which the tenant having been reimbursed his outlay the proprietor was at liberty to evict.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Purtab Sing, E. A. Commissioner—Effected the summary settlement of Jhujjur territory after its annexation in 1857.

2 So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, because proprietors were not able to cultivate all their land, and because the oppressive demands of the native chiefs were in a measure met by requiring the tenants to pay the greater portion themselves.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Amanut Ali, Tehsildar—Served as Revenue and Settlement Sheristadar at Ferozepore, and afterwards as Tehsildar in Rohtuk.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2, Yes, owing to land possessing no value; moreover, land was not allowed to lie fallow, but the *âmil* of the time provided for its cultivation as he pleased; consideration was always shewn to tenants who expended money in improving land.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Gholam Nubbee, Tehsildar—Has been employed in the settlement of the Kurnaul Pergunnah, as Naib Sheristadar in Rohtuk District, and Sheristadar in the Hissar District, lastly as Tehsildar in Rohtuk District.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, no distinction was recognized between proprietors and tenants, land had no value owing to the oppression of the *âmils* of the Native Government.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Hurjeewun Lal, Tehsildar—Was employed in the Settlement of Bahadurgurh Pergunnah.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, owing to the demand for labor ejectment of tenants was never thought of.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Ikrar Ali, Tehsildar—Has served as a Tehsildar from 1848 in the Loodhiana, Leia, Dera Ismael Khan and Rohtuk districts.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, because it was the interest of proprietors to retain their tenants in occupation, land being almost valueless owing to the excessive demands of the State, and tenants and proprietors being all required to pay alike by *buttai.*

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes. Indeed in some parts of the Punjab, *e. g.*, along the banks of the Indus, these reclaimers of waste land have always held the position of subordinate proprietors, insomuch that they have freely transferred their rights of occupancy.

SIRSA DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Lieutenant Colonel H. A. Dwyer Officiating Deputy Commissioner—Has served for nine years in nearly every part of the Punjab.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, because proprietorship carried with it no advantages, the revenue being leased out (in the Jhujjur territory) to farmers, who exacted more from the proprietor than from the tenant; at the same time tenants as a matter of fact were not led to look forward to the unmolested enjoyment of their holdings, being often forced to abandon their homes after clinging through years of adversity to the lands of their fathers.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. The position of tenants who had reclaimed waste land did not differ.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Mentab Singh, Extra Assistant Commissioner—Has served the Government all his life, and since 1847 has been employed in the Punjab as Deputy Collector and Extra Assistant Commissioner.

So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. As a matter of fact, tenants did not look forward with confidence to the unmolested enjoyment of their holdings.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Nor did those who had reclaimed waste lands.

AMBALLA DIVISION.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Colonel R. G. Taylor, C. B., C. S. I. *Commissioner*—Has served in the Punjab since the days of the Residency.

2. So far as your observation and knowledge extend, have you found it to the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, as a rule they did but this was chiefly because men were more scarce than they are now, and the loss of a cultivator therefore resulted in the non-cultivation of a tract of land, and no doubt the mutual dependance of proprietor and tenant begot a feeling akin to right in the minds of both, though this might not be recognized as the law of the land.

3. Is the same observable in the case of cultivators who have reclaimed waste land.

AMBALLA DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

C. P. Elliott Deputy Commissioner—Has held charge of a district for eight years in the Punjab.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Believes that tenants prior to annexation had no security against eviction; as a matter of fact however, they were left unmolested not as a matter of favor or right, but because, owing to high taxation, land had little value and paid no rent, and because proprietors had more land than they could cultivate themselves.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

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1. What opportunties have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

G. Thomson Esquire, Extra Assistant Commissioner—Has served in the Punjab for upwards of fifteen years, during five years of which he was employed in the Baree Doab, Mooltan and Shahpore Settlements.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, land being of little value and profits of agriculture small, moreover rights in property were not well defined, and as in times of trouble tenants rendered aid to their land-lords, it was to the advantage of the latter to retain them in their holdings.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Madhopershad, Extra Assistant Commissioner—Has served in the Punjab since annexation.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Does not think that proprietors (before annexation) used to evict tenants who had cultivated for long periods, but the latter held the land in their occupation at the pleasure of the proprietors.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, the proprietors as a rule used to make some condition with such tenant, as *e. g.*, that the rate of "*buttai*" for a certain number of years should be on a scale advantageous to the tenant.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Ajoodhya Pershad, Tehseeldar—Has served in the Settlement and Revenue departments for many years.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. No, the tenant was entirely at the will of the proprietor.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. do. do.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Adjoodhya Pershad Revenue Sherishtadar—Has been employed in the settlements of the Jullunder, Hoshayarpore and Amballa districts.

2. So for as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Before annexation, in the Cis-Sutlej States, the main power was vested in the Jageerdars, tenants were evicted at their pleasure, and in many cases even the proprietors were deprived of their rights.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. It was not customary to make any condition with such tenant, who was liable to eviction solely at the will of the proprietor.

LOODIANA DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Major W. Paske, Offg. Deputy Commissioner—Having served chiefly in the hills his experience in Revenue matters is necessarily limited.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. Prior to annexation tenants had no recognized rights, and were evicted at the pleasure of the land-lord, whatever the term of occupancy, but land being plentiful and labor scarce, resort was seldom had to this measure, on the contrary they were generally encouraged to remain.

3. It the same observable in the case of cultivators who have reclaimed waste land ?

3. Yes, as a rule more consideration was paid to this class of tenants.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

T. Roberts, Esquire, Assistant Commissioner—His experience is confined to that gained in the investigation of regular revenue suits in the Sealkote district

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. Yes, but this was not because they had not the power of evicting, but because it was the landlord's interest owing to the scarcity of labor to keep his cultivators in good humour, so that the tenant who paid his rent regularly had no fear of being turned out.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. Yes, the fact of a tenant having reclaimed waste land gave him an additional claim to consideration.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Rae Moonna Lal, Extra Assistant Commissioner—Has served since annexation.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. Before annexation land was of no value and tenants were evicted at the pleasure of the head men and rulers without regard to length of occupation.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. The claims of such cultivators were taken into consideration, to some extent, by the land-lords before ejecting them.

SIMLA DISTRICT.

No replies received.

JULLUNDUR DIVISION.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

T. D. Forsyth, Esquire, C. B., *Commissioner* —Has had good opportunity of observing and enquiring into relations of proprietors and tenants in the districts of Ferozepore, Lahore, Goojranwalla, and of those of the Jullundur Division.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Quotes extract from the Jullundur Settlement report, para. 207, as giving a correct description of the point under enquiry that "the distinction between cultivator and proprietor was keenly appreciated. The right of occupancy apart from proprietary right was unknown. The Government may have partially recognized it, but the people did not. However long a patch of land may have been occupied, the proprietor would at his pleasure resume it without ceremony, and the cultivator would resign it without demur." Adds that the fact was that "the Sikh rule pressed severely on the landlords, who in part evaded their burdens by saddling them on the cultivators." The Kardars being responsible for the revenue naturally looked only to the cultivator, and cared little for the dormant rights of proprietors, and in this way cultivators came to look with a certain degree of confidence to the unmolested enjoyment of their holdings.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, the fact of having broken up waste lands was decidedly considered as conferring on the cultivators claim to consideration both as regards rent and occupancy.

JULLUNDUR DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

G. R. Elsmie, Esquire, Deputy Commissioner. —Has served in the Punjab Commission since October 1858, having during that time been employed in all parts of the Punjab.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, and this whether the tenants had been in possession for long or short periods; as a matter of fact tenants did not apprehend eviction, but the power of proprietors to take this step does not appear to have been questioned

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes but easy rent for the first few years was the only distinction between tenants who had reclaimed waste land and those located in land already cultivated.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

R. Spencer, Esquire, Extra Assistant Commissioner.—Has served in the Hoshyarpore and Jullundur districts since 1861.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, and this arose from consideration of mutual interest. The proprietor protected the tenant and the latter in return rendered the former various services. So long as the tenant continued to fulfil the condition imposed on him by custom he was not ejected. Indeed, it much oftener happened that tenants, ruined by rack rents and bad harvests, abandoned their lands than that landlords evicted them.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. No especial right accrued to cultivators who reclaimed waste land beyond abatement of rent for a few years.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Pundit Motee Lal, Extra Assistant Commissioner—Has served in all parts of the Punjab since annexation, having chiefly been employed in Settlement work.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. During the time of the Mogul Emperors proprietors refrained from evicting tenants who had held for two generations or had improved land, but this was not the case under the Sikhs, but the relations of proprietors and tenants were entirely regulated by considerations of mutual interest.

3. Is the same observable in the case of cultivators who have reclaimd waste lands?

3. Do. do.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Sooltan Ali, Extra Assistant Commissioner—Has served as Tehsildar, Superintendent of Settlement, and Extra Assistant Commissioner, in all parts of the Punjab, since 1851.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. No. The proprietor evicted his tenants at his pleasure, whatever the length of the latter's occupancy might have been.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. These tenants were also liable to eviction, they were however allowed to hold for a certain period on easy terms.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Hissam-ood-din, Tehseeldar, Nowa Shahr—Has served in the Punjab, as Revenue Sheristadar and Tehsildar since 1851.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes in regard to tenants who had settled with their families in the village and who were possessed of agricultural stock. Land being more plentiful than labor, and the State demands heavy, proprietors were anxious to obtain tenants.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Ditto ditto.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab.

Oodey Ram, Tehsildar, Phillour— Has served as Tehsildar in the Delhi, Umballa and Jullundur Divisions since 1857.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings.

2. The proprietors had the power of evicting tenants during the Sikh rule, but seldom exercised that power.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, but these tenants held their lands for a certain period at easy rents.

Hoshyarpore District.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

H. E. Perkins, Esqr., Deputy Commissioner—Has served four years in different distrcts, and two years as Personal Assistant to the Financial Commissioner.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Believes that proprietors did refrain from evicting tenants of long standing as a general, though by no means as an invariable rule.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Cannot say, believes very little waste was reclaimed for many years before British rule.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

A. Donald Esqr., Judge Small Cause Court—Was in charge of the Sub-Division of Kussoor and Pind Dadun Khan, from 1860 to 1863.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes tenants were never evicted under the Sikh rule.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Dass Mull, Tehseeldar, Dussoha—(No answer to 1st question.)

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. Well-to-do cultivators looked forward to unmolested enjoyment of their holdings. Land in those days was of little value, and Kardars did as they liked.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. Yes, and they were treated better than other cultivators.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Sheopershad, Tehseeldar, Gurh Shunkur—(No reply to 1st question).

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. As a general rule old tenants were not evicted : they were rather encouraged to remain.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. Yes.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Luchhmun Dass, Tehseeldar, Oonah—(No reply to 1st question).

2. So far as your observation and known ledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. Yes, generally they refrained but had always the power to evict. Men were more in demand than land, and some times the cultivator himself would abandon his land under the pressure of over taxation.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. The reclaiming of waste conferred additional claims, and in some cases proprietory rights.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Dewan Dya Shunkur, Extra Assistant Commissioner—(No reply to 1st question).

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. The tenants were entirely at the mercy of the Kardars, who looked to the revenue only; no distinction was made between proprietors and cultivators; tenants who planted groves or sunk wells were generally allowed to remain in undisturbed possession.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab.?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

3. Reclaimers of large tracts of waste were looked upon as proprietors, those of small plots were treated as other cultivators.

Kangra District.

Major E. H. Paske, Offg. Deputy Commissioner—Held charge of the Goojrat district continuously for four years.

2. Yes, tenants in practice enjoyed fixity of tenure, owing to the great demand for their labor.

3. Yes.

UMRITSUR DIVISION.

P. H. Egerton, Esquire, Commissioner. (*No replies.*)

Umritsur District.

Kaim Ali, E. A. Commissioner—Has served ten years in former settlements.

2. Former cultivators were of two kinds: 1st, where labor was plentiful and the cultivators made interest with the proprietors to cultivate, they were turned out at pleasure; 2nd, where labor was scarce, and the proprietors were broken down and induced cultivators to come and occupy their lands, they were never evicted, and expected to remain undisturbed.

3. Those who applied for permission to break up waste lands were protected for twelve years more or less. Those cultivators who were invited and induced by the proprietors to reclaim land expected to remain in possession permanently. All got easy terms for a certain number of years and paid like other cultivators.

Agha Kulb-i-abid, E. A. Commissioner—Has served in the Settlement for many years.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. There was no protection of cultivators formerly. Just as now in Kupoorthulla, Jummoo, &c., the cultivator is ousted like the tenant of a house, so it was formerly in the British dominions of the Punjab.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. "Boota mar" cultivators were of this sort: 1st, those with whom conditions of easy rent for a term of years were made by the proprietors. These had no claim to permanency after the term expired, 2nd. Those who were located in the waste land by the Kardar to increase the revenue. These might be removed perhaps by the Kardar, but not by the proprietor.

SEALKOTE DISTRICT.

1. What opportunities have you had for observing or enqniring into the relations between proprietors and tenants in the Punjab?

Major T. W. Mercer, Deputy Commissioner—Has served in the Punjab Commission as Assistant and Deputy Commissioner since 1854.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations. And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, because proprietors consulted their own interests in not evicting. But the tenants did not probably feel secure, owing to official rapacity their status then not analagous to their position now.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Believes that men who were invited to come in and reclaim waste land, came in with all the rights of proprietors.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Sirdar Chunda Singh.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Proprietors turned out cultivators when they chose. The cultivator had no expectation of being undisturbed.

3. Is the same observable in the case of cultivators who have reclaimed waste land?

3. The "Boota mar" got easy terms for 2 or 3 years, but nothing else.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Sirdar Urjoon Singh.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. The same.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Do. do.

Raja Sahib Dyal.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Cultivators who had resided for generations in a village and joined the proprietors in fight and plunder were treated with consideration. Others were ousted at will however long they had cultivated.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. The same reply as Sirdar Chunda Singh.

Sirdar Shamsher Singh.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. In villages where the proprietors were powerful they turned out the cultivators at will. In most Kalsa villages the Kardar ousted and put in cultivators, and the proprietors had nothing to say to it, for the *ruler* got the proprietory profits—and in jageer villages the jageerdar, cultivators had no protection.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. The proprietors could only evict the reclaimers of waste where the former had located the latter themselves.

Wazeer Ali, Extra Asst. Commr.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. When the proprietor was present and brought in culivators to assist him he evicted at pleasure, and they had no expectation of permanent occupancy; but this was not the case when their first occupation was not with his permission, and they had improved the land without reference to him.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. Cultivators who broke up waste by order of Kardars, Mafeedars, &c., expected to remain in permanent possession, unless there was a special agreement that they should turn out at the end of a term of years.

LAHORE DIVISION.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

F. H. Cooper, Esqr., C. B., Commissioner—Settled parts of the Kangra and Delhi districts, besides serving in the Dehli and Umritsur districts for nine years.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. Yes, such tenants were not evicted, but they were liable to rent. They did not anticipate removal by proprietors constantly absent on military duty, and who did not appreciate the value of land.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. Such cultivators looked to long lease and peculiar indulgences.

RAWUL PINDEE DIVISION.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

The Hon'ble E. L. Brandreth, Commissioner—Made the settlement of the Ferozpore district.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. The more influential proprietors who had the entire management of their villages did evict much as they pleased; but the mass of proprietors as a rule certainly did not.

3. Is the same observable in the case of cultivators who have reclaimed waste lands.

Rawul Pindee District.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Bishen Sing, Tehsildar—Has served as Settlement Shereistadar in this district from 1855 to 1866.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. No proprietors, save those of influence and who held the "putta" had the power to evict. "Puttahs" again were given to anybody, strangers or "kumeens," over the heads of the original proprietors. Only "Puttadars," "Kardars" and "Jageerdars" could evict, and this power was only exercised for building sites or well sites, but without reference to period of occupancy. Tenants of long standing did not expect to be disturbed.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. (Question not fully understood).

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Mehdee Khan, Tahsildar—Served in the Settlement Department from 1852 to 1860 in the districts of Hoshyarpore, Umballa, Rawul Pindee and Jhelum.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. The same as Bishen Sing. Adds that cultivators were so scarce that they were more likely to abscond than to be ousted.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. Such cultivators could be ousted by influential proprietors after enjoying a light assessment for few years.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Kishen Kour, Lumberdar—Was a Kardar before annexation.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. They had no power to evict; such power was only held by "*Kardars*," "*Jageerdars*" and "*Puttadars*," and seldom used. Such tenants did not expect to be disturbed, as they had spent large sums in reclaiming and improvements.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. Yes, the proprietors could not evict and those who could did not.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Rajadha Ruttun Chund.—Was Qanongoe under Settlement rule.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations ? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings ?

2. Yes, they were evicted at the will of the proprietors, without regard to length of occupancy, and had no confidence in the permanency of their occupancy.

3. Is the same observable in the case of cultivators who have reclaimed waste lands ?

3. No concessions were made to such tenants.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab ?

Hookum Chund, E. A. Commr.—Kardar before annexation. Since that Sheristadar of Lahore Commissioner's office, and Extra Assistant Commissioner in Rawul Pindee Settlement.

3. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. The same as Bishen Sing.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. They would never be dispossessed owing to the labor and expense they had incurred.

JHELUM DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Coll. Bristow, Depy. Commr.—Has served in the Commission since annexation.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. No, the proprietors evicted without reference to length of occupancy. Sometimes Kardars and Government officials usurped that power.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Such tenants merely enjoyed a light assessment, or cultivated free for a harvest or two.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

F. E. Moore, Esqr., Asst. Commr.—Has served in the Commission since 1859.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, but the tenants could not have questioned the right to evict.

3. Is the same observable in the case of cultivators who have reclaimed waste lands.

3. Many such have become proprietors.

SHAHPORE DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Puniab?

Captain W. G. Davies, Depy Commr.—Served in the Settlements of Jhung, Gogara and Mooltan as an Assistant; revised the Settlement of Thanesur; and completed the Settlement of Shahpore.

2. So far as your observation and knowledge extend, have you found it to be the fact, that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. The proprietors had no power of eviction, this only resided in Kardars. If proprietors had the power it would have been against their interest to exact it. Hence, *as a fact*, the permanency of the tenants tenure was assured to him so far as the proprietor was concerned.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, they were not disturbed.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Ram Sahae, Tahsildar—Has served for seventeen years in the Shahpore district and Settlement.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. There were two classes of privileged tenants: 1st, those who had been allowed to sink wells: 2nd, those who had, at great expense, cleared waste lands along the river bank. The first were never evicted, the proprietor merely receiving from them a small perquisite, generally a topa in the maund. The 2nd class gave the same acknowledgements to the proprietor, but their lands were held on terminable leases at easy rates for periods varying from 6 to 10 years.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. As a general rule however the "*Boota mars*" were not disturbed.

GOOJRAT DISTRICT.

Captain Waterfield, Settlement Officer.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes, but not in any way out of consideration for length of occupancy. It was not the interest of proprietors to evict any tenants. No one however denied the right to do so.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. These if not located by the proprietor may have looked for permanent occupancy.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Mirza Azim Beg, Extra Assistant Commissioner—Has served for 12 years in the Huzara and Goojrat Settlements.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Proprietors ousted as they chose, only consulting their own interests—and were supported by the Kardars; but as the tenant did not enjoy their (the proprietor's) profits, the latter as a rule refrained from eviction; the two classes were entirely dependent upon each other, and the tenant supported the authority of the proprietor.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes—they also were ousted at will.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Bunseedhur, Superintendent of Settlement—Served in the Rawul Pindee Settlement from 1855 to 1864. Since then in the Goojrat Settlement.

2. So far as your observation and knowledge extends, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes—proprietors as a body had not the power of eviction, and those tenants who had spent money in improving land were generally permanent.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Such were treated with consideration but could be ousted.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Bukhtawur Lal, Superintendent of Settlement—Has served in both Shahpore and Goojrat Settlement for many years.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Proprietors evicted without consideration of length of occupancy, save indeed those tenants who had been located by Kardars.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes—were evicted at pleasure

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Sooruj Koul, Teshildar—Has served as Sheristadar in the Commissioner's office and Tashildar.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. There were no evictions, proprietors were glad of any assistance in paying the heavy demands of the State.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes.

PESHAWUR DIVISION.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Major F. R. Pollock, Commissioner—Has been employed in the province since November 1847, chiefly however in frontier districts.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Yes—evictions were rare owing to the demand for labour. Doubts however if "tenants looked forward with confidence to the unmolested enjoyment of their holdings," as a quarrel might at any time lead to an abrupt termination of their relations with the proprietor; there was no question of right such as was subsequently introduced.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Special agreements were made with such tenants in the nature of a lease rather than permanent surrender of right of cultivation.

PESHAWUR DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

D. C. Macnabb, Esq., Deputy Commissioner—Has been in charge of Settlements in the Jhelum and Shahpore districts.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

3. Proprietors refrained from ousting or changing old tenants so long as they paid them the customary shares of produce, dues and service; but their right to evict was never questioned, and was constantly exercised.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Such tenants were more free than others from the risk of losing their holdings—chiefly however in consquence of the great demand for labor.

HAZARA DISSTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Captain E. L. Ommanney, Officiating Deputy Commissioner—Gives the pith of replies of Extra Assistant Commissioner, two Tahsildars and other men of note of his district.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Proprietors had entire control over their property; no tenant, however long the period during which he had cultivated, expected to retain his land against the will of the proprietor. The matter was one entirely of self interest as far as the proprietor was concerned.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. The cultivator reclaiming waste land was generally allowed to hold for a fixed period at easy rates of rent, after the expiration of which he was liable to ejection.

KOHAT DISTRICT.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Lieutenant N. Cavagnari, Officiating Deputy Commissioner—Gives the result of his enquiries into the subject of tenant-right.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Denies the existence of tenant-right. Every non-proprietory cultivator holds entirely at the will of the proprietor of the land, and can be ejected at any time, except in the case of manured land, from which a tenant cannot be ejected until after the harvest.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. No clearing of waste land or length of possession conveys any *right* of occupancy in the absence of a specific understanding to that effect. But, as agricultural labor is much in demand, tenants are seldom ejected in practice.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

J. B. Lyall, Esquire, Officiating Settlement Commissioner—Served as Assistant Commissioner, in the Hoshyarpore, Lahore, Goordaspore, Kangra and Umritsur districts, and afterwards as Settlement Officer of Goordaspore and Kangra.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holding?

2. Yes, as long as the proprietors did not want the land for their own cultivation, and as long as the tenants did not seriously misbehave themselves. The real reason was that ordinarily the *rent* went to the Government or the Jageerdar, and not to the proprietors, and where even the latter *were* responsible for the the Govt. revenue and collected by "*buttai*" from the tenant, the rates of *buttai* and proprietary dues were regulated by custom and not by competition, hence the great inducement to change tenants was wanting.

3. Is the same observable in the case of cultivators who have reclaimed wasted lands?

3. The mere fact that a cultivator had reclaimed waste land would have no weight if the proprietor gave him the land; ordinarily speaking such tenants were allowed to hold at light rates or rent free for a few years till they had reimbursed themselves their outlay.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

R. P. Nisbet, Esquire, Settlement Officer Goojranwala—Has had his attention prominently directed to the subject of tenant-right in consequence of the extra-judicial enquiry going on under the orders of the Settlement Commissioner.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Prior to annexation the proprietor as a rule exercised no authority to locate a cultivator, nor could he evict one unless the Kardar or ruler was induced by some illicit consideration to commit an act of oppression.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Yes, parties were encouraged by the Government officials to reclaim land by the grant of proprietary rights and "*inams*."

Replies to the 4th question on the subject of

TENANT RIGHT IN THE PUNJAB.

Question 4.—Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation, either through the intervention of the Courts or otherwise; on the other hand have attempts to evict such tenants been largely prevented by our Courts?

DELHI DIVISION.

Lieut. Col. W. McNeile, C. S. I., *Commissioner*—No, the Settlement Record till quite recently having been taken as the basis of decision, few evictions have taken place; and as the record often erred largely in favor of tenants, many evictions were prevented by our Courts which ought to have been allowed.

GOORGAON DISTRICT.

Lieut. Col. J. W. Cripps, Deputy Commissioner—No, neither through the intervention of the Court or otherwise. In many cases harsh evictions have been prevented by the Courts.

DELHI DISTRICT.

D. Fitzpatrick, Esquire, Offg. Deputy Commissioner—Has not had sufficient experience to give a positive reply to this question.

Rae Bunsee Lal, Extra Assistant Commissioner—Gives no distinct answer to this question.

KURNAUL DISTRICT.

Captain J. Parsons, Deputy Commissioner—Tenants of either of these classes have rarely been ejected since British rule. Our Courts have generally held that occupancy of 2 generations or twenty years conferred a right to continued occupancy.

Mittthun Lal, Extra Assistant Commissioner—No, on the contrary eviction of hereditary tenants have been largely prevented by our Courts.

Sham Lal, Extra Assistant Commissioner—The same reply.

HISSAR DIVISION.

Question 4.—Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation, either through the intervention of the Courts or otherwise; on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

J. Naesmyth, Esquire, Commissioner—No, they have not; lately there has been a tendency to evict, which has been legitimately checked by our Courts.

Hissar District.

Captain J. Forster, Offg. Deputy Commissioner—Attempts to evict tenants of the first class have not been numerous.

Applications to turn out tenants of the second class more common. Does not think the Courts have taken a decided part in preventing evictions.

Syud Jumal Ali, Extra Assistant Commissioner—No attempts to evict tenants of long standing have been prevented by the Courts.

Peerbuksh, Extra Assistant Commissioner—The same. The Courts, when application has been made to them, have been guided by the recorded status of the tenants in the Settlement misl.

Rohtuck District.

Major J. Fendall, Deputy Commissioner—No, few evictions have taken place, and certainly none through the intervention of the Courts.

C. W. Lennox, Esquire, Extra Assistant Commissioner—No. The Courts have largely prevented the eviction of tenants of both classes where they have fulfilled their engagements.

Partab Singh, Extra Assistant Commissioner—No. The Courts have prevented evictions of tenants who were entered in the Settlement Record as "*Mouroosee.*"

Amanut Ali, Tehseeldar—The same reply.

Question 4.—Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation, either through the intervention of the Courts or otherwise; on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

Gholam Nubbee, Tehseeldar—Yes, where there was any error in the Settlement Record as regards the status of the particular tenants (and there were many such errors) but not otherwise.

Hurjeewun Lal, Tehseeldar—No.

Ikrar Aly, Tehseeldar,—No, except where errors have been committed in recording the status of the cultivator as hereditary or non-hereditary.

SIRSA DISTRICT.

Lieut. Col. H. A. Dwyer, Officiating Deputy Commissioner—No, neither have the Courts largely prevented attempts to evict tenants.

Mehtab Sing, Extra Assistant Commissioner—No, not to any considerable extent.

UMBALLA DIVISION.

Col. R. G. Taylor, C. B. C. S. I., *Commissioner*—No, the Courts have afforded protection to both classes.

UMBALLA DISTRICT.

C. P. Elliott, Esquire, Deputy Commissioner—No. Tenants who have been recorded as "*hereditary*" are seldom or ever evicted; they could only be turned out if they failed to fulfil their engagements, and with our light assessments this can seldom occur.

G. Thomson, Esquire, Extra Assistant Commissioner—The same answer.

Madhoopershaud, Extra Assistant Commissioner—No, in the early days of British rule the Courts stepped in and prevented capricious evictions.

Adjoodhia Pershaud, Tehseeldar—No hereditary tenants recorded as such in Settlement papers have never been evicted.

Question 4.—Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation, either through the intervention of the Courts or otherwise; on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

Adjoodhia Pershaud, Revenue Sheristadar—No, attempts at such evictions have frequently been prevented by our Courts.

LOODIANA DISTRICT.

Major W. Paske, Officiating Deputy Commissioner—The same reply as the preceding.

T. Roberts, Esquire, Assistant Commissioner—Attempts to evict have been largely prevented of late years.

Rae Moonna Lal, Extra Assistant Commissionor—No! eviction of *hereditary* cultivators has been prevented by the Courts.

No replies from Simla.

JULLUNDUR DIVISION.

T. D. Forsyth, Esquire, C. B., *Commissioner*—No! attempts to evict such tenants have been largely prevented by our Courts.

JULLUNDUR DISTRICT.

G. R. Elsmie, Esquire, Officiating Deputy Commissioner—No! *Mouroosee* tenants have been maintained in their occupation by our Courts.

R. Spencer, Esquire, Extra Assistant Commissioner—Yes! many evictions have taken place outside the Courts.

Pundit Motee Lal, Extra Assistant Commissioner—No! hereditary cultivators have retained possession of the lauds recorded in their names.

Sooltan Ali, Extra Assistant Commissioner—The same.

Hissamooddeen, Tehseeldar of Nowa Shahur—The same.

Oodeyram, Tehseeldar of Phillour—The same.

Question 4.—Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation, either through the intervention of the Courts or otherwise; on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

HOSHYARPORE DISTRICT.

H. E. Perkins, Esquire, Deputy Commissioner—No, the tendency of our Courts has been to maintain possession.

A. Donald, Esquire, Judge Small Cause Court—Large numbers of non-hereditary cultivators have been evicted.

Dewan Dya Shunkur, Extra Assistant Commissioner, Dass Mall, Tehseeldar of Dussoa—Sheopershaud, Tehseeldar of Ghur Shunkur, and Luchmee Dass, Tehseeldar of Oonah—Give the same reply that hereditary cultivators were maintained in their possession by our Courts.

KANGRA DISTRICT.

Major E. H. Paske, Officiating Deputy Commissioner—No, few of either class have been evicted.

UMRITSUR DIVISION.

UMRITSUR DISTRICT.

Kaim Ali, Extra Assistant Commissioner—Under British rule cultivators have been divided into two general classes, hereditary and non-hereditary. The former have been protected by the Courts, but not the latter.

Agha Kulb-i-abid, Extra Assistant Commissioner—The same.

SEALKOTE DISTRICT.

Major Mercer, Deputy Commissioner—No, because the Settlement had recorded hereditary occupancy. The Courts have protected tenants of long occupancy. Suits for eviction have increased lately, especially just before revision of Settlement.

Sirdar Chunda Sing—Quotes a few instances in which the Courts have both assisted and prevented proprietors from ousting cultivators of the

Question 4.—Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation, either through the intervention of the Courts or otherwise; on the other hand, have attempts to evict such tenants been largely prevented by our Courts? classes described in the foregoing questions.

Sirdar Urjoon Sing—The Courts have refused to oust cultivators of the description specified in question 2. Quotes instances.

Raja Sahib Dyal—The same as Extra Assistant Commissioner Kaim Ali. Adds that hereditary tenants have in some instances abandoned their lands in bad seasons against the proprietors wishes.

Sirdar Shumsher Sing—Refers to the distinction introduced at former settlements of hereditary and non-hereditary cultivators, and adds that the former have never been evicted.

Wazeer Ali, Extra Assistant Commissioner—The same as Extra Assistant Commissioner Kaim Ali.

LAHORE DIVISION.

F. Cooper, Esq., C. B., *Commissioner*—No, and attempts to evict have been prevented by our Courts. Tenants and proprietors fight keenly for and against the status of "*Mouroosee.*" In Balubgurh tenants of very long standing were evicted, though they had not anticipated such eviction.

RAWUL PINDEE DIVISION.

The Hon'ble E. L. Brandreth, Commissioner—(Does not answer this question).

Rawul Pindee District.

Hookum Chund, Extra Assistant Commissioner—No, neither class has been evicted, owing to a rumour after annexation that the proprietor had no power to evict.

Bishen Sing, Tehsildar—No, owing to a rumour spread that they could not be evicted. The Courts have shown a desire to prevent ejectment. Quotes two instances however, in which the Settlement Officer took away land from such cultivators.

Mehdee Khan, Tehsildar—No, the Courts have prevented it.

Kishen Kour, Lumberdar—Yes, the Courts have not prevented eviction.

Question 4.—Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation either through the intervention of the Courts or otherwise; on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

Rujadha Ruttun Chund Kanoongoe—No, the Courts also prevented it.

JHELUM DISTRICT.

Lieut. Col. Bristow, Deputy Commissioner—No, nor have the Courts interfered to prevent attempts to evict.

F. E. Moore, Esq., Assistant Commissioner—No, but the proprietors consider it a hardship that they can neither evict or get more rent.

SHAHPORE DISTRICT.

Capt. W. G. Davies, Deputy Commissioner—No, very few; on the contrary, such tenants have often acquired modified proprietary rights.

Ram Sahae, Tehsildar—No, those who had sunk wells often became "proprietors of their holdings" and the "*Boota Mars*" have generally had rights of occupancy conferred on them.

GOOJRAT DISTRICT.

Captain Waterfield, Settlement Officer—No, not within his observation. Those who obtained the status of hereditary cultivators at the regular Settlement were considered by the people immovable, and the Courts have been guided by the entries of the settlement record and so prevented eviction.

Mirza Azim Beg, Extra Assistant Commissioner—At first they were ousted, but not after classification at Settlement, to which all disputes were referred.

Bunseedhur Supdt. of Settlement.
The same.

Bukhtawur Lal, Supdt. of Settlement.
The same.

Sooruj Koul, Tahsildar—No.

PESHAWUR DIVISION.

Major Pollock, Commissioner—No, fewer in Peshawur then elsewhere, attempts to evict have been largely prevented by the Courts of late years.

Question 4.—Since annexation have tenants of either or both classes been evicted to any conisderable extent within your observation, either through the intervention of the Courts or otherwise; on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

PESHAWUR DISTRICT.

D. C. MacNabb, Esquire, Deputy Commissioner—Our 12 years rule has prevented evictions as a rule, but in some districts where individual officers respected the rights of property, landlords have been allowed to turn out tenants of old standing who have shown themselves refractory or indolent. Attempts to evict such tenants have been largely prevented by our Courts.

HUZARA DISTRICT.

Captain E. L. Ommaney, Offg. Deputy Commissioner—No, few tenants of either class have been evicted while on the other hand, the action of the Courts has prevented this being done.

KOHAT DISTRICT.

Lt. N. Cavagnari, Offg. Deputy Commissioner—(Does not answer this question.)

J. B. Lyall, Esq., Offg. Settlement Commissioner—No, few evictions have taken place and of those scarcely any by order of Court. Attempts to evict however have not been *directly* prevented by our Courts.

R. P. Nisbet, Esquire, Settlement Officer Goojranwala—No, evictions of such tenants have not been frequent. Disputes have been rare owing to the demand for labor.

Replies to the 5th and 6th questions on the subject of

TENANT RIGHT IN THE PUNJAB.

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court, that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescription than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5). That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

DELHI DIVISION.

Lieutenant Colonel W. McNeile, C. S. I., *Commissioner*.—The 5th and 6th questions must be taken together, as on the practical working of the rules depends their equity or otherwise; thinks that the 2nd rule would not be inequitable, but in practice would be so easy of evasion as to be altogether inoperative. Dissents altogether from rule 3. As regards rule 4, thinks that the interests of both parties would be consulted by giving shorter notice. Rule 5 is unobjectionable, but a proviso should be added that the landlord have the option of accepting the award and paying accordingly or of withdrawing his claim. *Adds that the real issue is not one of dispossession, but one of rent*, and rules should therefore be framed for enabling proprietors to share in the increased value of property as that value rises.

GOORGAON DISTRICT.

Lieutenant Colonel J. M. Cripps, Deputy Commissioner—Only objects to the fourth rule, which he considers injudicious as it would give a dangerous opportunity to a dissatisfied tenant for damaging the property. Does not consider the enforcement of any of the conditions would be difficult or uncertain in practice.

DELHI DISTRICT.

D. Fitzpatrick, Esquire, Officiating Deputy Commissioner—No; he would be in a better position, but in determining the amount of compensation to be paid to the tenant the arbitrators should be instructed simply to find what is a fair amount of compensation under *all the circumstances of the case*. Conditions 2 and 3 would lead to great difficulty and uncertainty in practice, and should be omitted.

Rae Bunsee Lall, Extra Assistant Commissioner—No; approves of the rules suggested except Nos. 2 and 4, which would in his opinion bear hardly on the proprietor, and enable the tenant to injure the land before he was turned out. Thinks that compensation should only be given for wells, houses and large trees.

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescription than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

KURNAL DISTRICT.

Captain J. Parsons, Deputy Commissioner—Does not consider proposed rules would place the cultivator in a worse position, but does not recommend their adoption, except rule 5, as doing so would cause undue interference with rights of property. Moreover, with the exception of rules 1 and 5, great difficulty would be experienced in their application.

Mithun Lal, Extra Assistant Commissioner—Approves of the proposed rules, but thinks that with exception of rules Nos. 1, 2, and 4, difficulty would be felt in their application in practice. One year's warning would suffice in rule 4.

Sham Lal, Extra Assistant Commissioner—No; nor does he think there would be any difficulty in applying these and other similar rules.

HISSAR DIVISION.

J. Naesmyth, Esquire, Commissioner—Yes, the *tenant would be placed in less favourable position*, as nowhere else could he establish himself in such favorable circumstances with prospects such as had been originally presented to him by the proprietor. Apprehends no practical difficulty in working the rules.

HISSAR DISTRICT.

Captain J. Forster, Officiating Deputy Commissioner—No, the proposed rules would not entail any peculiar hardship on the tenant. Approves generally of the rules, and sees no practical difficulty in their enforcement. Thinks that perhaps rules 2 and 3 would press hardly on the proprietor.

Syud Jumal Ali, Extra Assistant Commissioner—Is of opinion that it would be unjust to evict hereditary tenants except in cases where there is contumacious refusal to pay rent (malikana). The effect of eviction on such tenants would be their ruin.

Peer Baksh, Extra Assistant Commissioner—Yes, hereditary tenants should not be evicted except in refusal to pay enhanced rent.

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in worse position than he held before annexation or not?

(1. That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescription than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenants to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

Apprehends difficulty in the practical application of the rules proposed. Cultivators if dispossessed would be unable to find suitable employment elsewhere.

ROHTUCK DISTRICT.

Major J. Fendall, Deputy Commissioner—Yes; objects to the rules, and would not allow hereditary cultivators to be ousted under any circumstances. He deprecates any interference on the part of Government, beyond defining more carefully what tenants are entitled to rights of occupancy.

C. W. Lennox, Esquire, E. A. Commissioner—Yes; undoubtedly the tenant would be placed in a worse position, for unable to find suitable employment elsewhere he would be ruined. Does not however apprehend any difficulty in the mere enforcement of the conditions proposed.

Purtab Sing, Extra Assistant Commissioner—(Has failed to apprehend the drift of the enquiry.)

Amanut Ali, Tehseeldar—Has failed to apprehend the drift of the enquiry-)

Gholam Nubbee, Tehseeldar—Has not quite understood the object of the enquiry; but argues generally against the eviction of tenants with rights of occupancy, at the same time admits the right of proprietors to raise their rents as the demand for land rises. Anticipates difficulty in the practical application of the proposed rules.

Hurjeewin Lall, Tehseeldar—The same.

Ikrar Ali, Tehseeldar—Yes; eviction under any of the conditions specified would cause great distress. Does not think that hereditary cultivators should be ousted from their lands on any conditions. Does not however apprehend difficulty in the application of the proposed rules.

SIRSA DISTRICT.

Lieutenant Colonel H. A. Dwyer, Officiating Deputy Commissioner—Does not consider that eviction of tenants under the rules proposed

Question 5.—Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *boná fide* needed for the proprietor himself.

(3.) That no tenant of less prescription than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable emyloyment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

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would place them in a worse position than that they held prior to annexation, but thinks that the result would often be much *hardship*, and in many cases ruin. Moreover, the application of the rules would be difficult and uncertain in practice.

Mehtab Singh, Extra Assistant Commissioner—No; approves of the rules, and does not apprehend difficulty in their practical application.

UMBALLA DIVISION.

Colonel R. G. Taylor, C. B., C. S. I., *Commissioner*—Yes; the tenant would be placed in a worse position than that he held under native rule. Objects to any legislation that would have the effect of throwing all the advantages conferred by our rule, in giving security to life and property and enhanced value to land, into the hands of the proprietor. Considers that the tenant as the weaker class requires protection.

UMBALLA DISTRICT.

C. P. Elliot, Esquire, Deputy Commissioner—No; but still does not consider that the tenants *whose rights of occupancy have been once conferred*, could be evicted with justice on the terms suggested. Would improve the position of landlords by allowing them to *raise their rents* up to a certain limit. Objects to any new rules on the subject, as difficult of application in practice and tending to disturb the minds of the agricultural population.

G. Thomson, Esquire, Extra Assistant Commississioner—Yes; objects to the proposed rules on the ground that their application would lead to hardship and injustice. Apprehends however no difficulty in *enforcing* the proposed rules owing to the *docility* of the population.

Madhopershad, Extra Assistant Commissioner—No; but considers that the enforcement of the rules proposed would be attended with many difficulties.

Adjoodhia Pershad, Tehseeldar—No reply to 5th question. Anticipates no difficulty in enforcing rules for eviction.

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *bone fide* needed for the proprietor himself.

(3.) That no tenant of less prescription than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation to be awarded by arbitrators be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

Adjoodhia Pershad, Revenue Sheristadar—No; but considers that the application of the rules proposed would be attended with difficulty and uncertainty in practice.

LOODIANA DISTRICT.

Major W. Paske, Officiating Deputy Commissioner—No; the tenant would be in a better position than before annexation. Anticipates no great difficulty in enforcing the conditions detailed in 5th question.

T. Roberts, Esquire, Assistant Commissioner—Considers that although the application of the proposed rules could not be said to entail hardship, yet the tenants would actually be in a worse position than in former years, because their land was less valuable and labor more in demand. The only difficulty in the application of the rules proposed would be in the matter of compensation, owing to the difficulty with which the tenant would establish himself elsewhere, land being now so scarce.

RaeMonna Lall, Extra Assistant Commissioner—No; but the tenant would experience great difficulty in establishing himself elsewhere.

No replies from Simla.

JULLUNDUR DIVISION.

T. D. Forsyth, Esquire, C. B., *Commissioner*—No; except in the cases of tenants to whom rights of occupancy had been assigned after a judicial enquiry at the time of Settlement. Anticipates difficulty in the practical application of rule II; the others seem unobjectionable, and No. V quite indispensable, in fact the one on which the whole arrangement would turn.

JULLUNDUR DISTRICT.

G. R. Elsmie, Esquire, Officiating Deputy Commissioner—No; doubts the expediency of retaining 2nd and 3rd conditions, as their enforcement would be attended with difficulty and would be harassing to the proprietor.

R. Spencer, Esquire, Extra Assistant Commissioner—Yes; dissents from the 3rd rule as likely to be burdensome on the proprietor in practice. Anticipates no difficulty in applying the rest.

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(3.) That it be shown to the satisfaction of the Court, that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescription than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

Pundit Motee Lal, Extra Assistant Commissioner—No; anticipates difficulty in the enforcement of the 5th rule.

Sooltan Ali, Extra Assistant Commissioner, Hissamooddeen, and Oodey Ram, Tahseeldars, all of the same district, give the same answer as Pundit Motee Lal.

HOOSHYARPORE DISTRICT.

H. E. Perkins, Esqr., Deputy Commissoner—Does not distinctly answer the 5th question. In reply to 6th question states that he considers only the 1st and 5th of the proposed conditions advisable.

A. Donald, Esquire Judge small Cause Court—Yes; but considers the position of the proprietor with reference to hereditary cultivators should be improved. Considers that the enforcement of the proposed conditions would be difficult and uncertain in practice.

Dewan Dya Shunkur, Extra Assistant Commissioner—(The real drift of the enquiries apparently not understood.

Dass Mull, Tahseeldar—Ditto.

Sheopershad, Tahseeldar—Yes; the position of tenants under the proposed rule would be worse than under Sikh rule. Anticipates difficulty and hardship from the enforcement of the rules.

Luchhmun Dass, Tahseeldar—No.—No difficulty would be experienced in applying the rules proposed.

KANGRA DISTRICT.

Major E. H. Paske, Officiating Deputy Commissioner—Yes, the tenant will be placed in a worse position if allowed to be evicted even under the proposed conditions. Apprehends no practical difficulty but much uncertainty in their enforcement.

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

UMRITSUR DIVISION.

UMRITSUR DISTRICT

Kaim Ali, Extra Assistant Commissioner—Although the status of hereditary cultivator is a recent creation, yet people's minds have became accustomed to it, and it would now be very unjust to oust cultivators who have held for 2 or 3 generations. Approves of clauses 1, 2 and 3. Disapproves of 4. Recommends the customary notice of one year. Disapproves of 5, compensation, the custom is new and would cau se difficulty.

6. Government interferes too much in adjusting rent; if the proprietor had more power to make his own arrangements he would not wish to oust the cultivator. The present rate of rent is altogether insufficient, hence the proprietors desire to evict.

Agha Kulb-i-abid, Extra Assistant Commr.—Approves of all 5 clauses, and considers they would cause no injustice. But would only act on them when a new Settlement is made.

SEALKOTE DISTRICT.

Major Mercer, Deputy Commr.—Approves generally of the conditions, suggesting at the same time modifications.

Sirdar Chunda Sing—Thinks that tenants might be evicted without injustice. Would adopt clauses 1, 4, and 5 only.

Sirdar Urjoon Sing—Would only allow cultivators of short standing to be turned out. Approves of clauses 1, 2, 3, and 4. Would only allow compensation for wells and groves, not for improvements, for which cultivator has received a full return.

Raja Sahib Dyal—Would not oust very old cultivators, but would raise the rent on them; otherwise approves of clauses 1, 2 and 4. Thinks clause 3 prohibitive, therefore unadvisble. Disapproves of clause 5 as making too much of the cultivator, and because its application would be difficult in practice.

Sirdar Shumsher Sing—Approves of cultivators of 20 years, &c., being ousted, but not "Bootamars," who have joined the proprietors in fight and plunder and have paid fines, sunk wells, &c. Approves of 1st rule; also of 2nd, but thinks some safeguard necessary to prevent the proprietor after evicting one tenant handing over the land to another. Suggests modifications in the other rules.

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court, that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescription right than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

Wazeer Ali, Extra Assistant Commissioner—Approves of all five clauses, and considers they would cause no injustice (6th question not answered).

LAHORE DIVISION.

F. Cooper, Esquire, C. B., *Commissioner*—Question not fully answered. But as regards the proposed rules for eviction objects to them as injurious to proprietors and as difficult to apply.

RAWUL PINDEE DIVISION.

Rawul Pindee District.

Hookum Chund, Extra Assistant Commissioner—Thinks that such a rule would require most careful working and might do more harm than good, because hereditary cultivators are of so many grades, from the original proprietors, to jageerdars, farmers of revenue, and mere kumens; the former ought not to be evicted under any circumstances. Anticipates no difficulty in the application of the proposed rules, because any orders can be carried out: people get used to it in time. The proprietor will manage to evict all such tenants and ruin them as a class.

Bishen Sing, Tahseeldar—Yes; a gross injustice and a hardship, because such tenants are of all kinds (gives description of each kind, quoting instances, see his reply printed in extenso). Nothing would be sufficient compensation for eviction to some of these. But all might be evicted if they refused to pay a rent fixed by arbitration as equitable. Anticipates great dissatisfaction and hardship from the enforcement of the rules.

Mehdee Khan, Tehseeldar—No; such a rule would be very proper, as placing the parties in their proper, positions. The tenant should be made subservient and the power of the proprietor should be maintained. Anticipates no difficulty in the application of the proposed rules.

Kishen Kour, Lumberdar—Yes; decidedly a hardship, because proprietors will get up cases to fit in with the conditions for eviction. Considers the enforcement of the rules would be difficult and uncertain in practice.

Question 5.—Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(3.) That no tenant of less prescriptive right than the one proposed to be evicted eixsts in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

Rajadha Ruttun Chund, Qanoongoe—Yes; a hardship, because land is now so scarce. The enforcement of the proposed rules would breed dissatisfaction, which would however disappear in time.

JHELUM DISTRICT.

Lieutenant Colonel Bristow, Deputy Commissioner—No; the cultivator is sufficiently protected by the conditions. Anticipates difficulty in the application of the rules as the tenants have enjoyed exemption from eviction for so long.

F. E. Moore, Esqr., Assistant Commissioner—No, except that before annexation the tenant ran no risk of being ousted and in many cases paid no rent, only revenue. So far eviction would place him in a worse position than before. Anticipates no difficulty in enforcing the rules, but doubts their policy.

SHAHPORE DISTRICT.

Captain W. G. Davies, Deputy Commissioner—Yes to some, to those who had obtained the right of occupancy by an expenditure of capital eviction would be a great hardship. In lieu of eviction proposes two plans, which while reserving to tenant a share in the proprietary profits which he has hitherto enjoyed, would also secure to proprietor a more equitable share of the profits. 1st. Fixing grain payments at a rate somewhat below that paid by tenants-at-will. 2nd, A division of the land between the parties in proportion to the share of profits enjoyed by each. A tenantry that cannot improve the land should be got rid of. Anticipates difficulty and uncertainty in the application of the proposed rules. They are moreover based on a wrong assumption, that the landlord wants to get rid of his tenant, whereas the fact is that he only wants a fairer share of the profits of cultivation. Condition 3 is prohibitive, because the landlord would have to resume the lands of his grain-paying and most profitable tenants before he could touch the cash-paying hereditary tenant.

Ram Sahae, Tahsildar—Yes in some instances, and such tenants are not as a rule found in Bhaiyachara estates. They are generally found in Zamindaree mouzahs, but in these the proprietors do not generally cultivate at all, or very sparingly; and in these, conditions II and III could not be observed till all the other tenants had been removed. If conditions IV and V were acted on (unguarded by II and III) these tenants would be

Question 5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that enforcement of all or any of the above conditions would be in practice difficult or uncertain?

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in a very inferior position, for money compensation would be no equivalent: there is no demand for agricultural labor now, and this class could take to no other employment. Proprietors do not wish to evict, but to revert to grain payments. As regards the working of the proposed rules, adds that the Courts are hasty and uncertain in their action, and this is a very delicate question for them to deal with.

GOOJERAT DISTRICT.

Captain Waterfield, Settlement Officer—Yes to some, to the class who should have been made sub-proprietors. But the conditions are applicable to many, without injustice being done. Object to clause 4: no necessity for such long warning if means are adopted to assist the evicted to obtain re-employment. Condition II uncertain and likely to lead to frauds. Condition III prohibitive. Condition V difficult and uncertain.

Mirza Azim Beg, Extra Assistant Commissioner—No; a most proper rule, putting each class in its proper position; the dissatisfaction of proprietors would disappear. Application of the proposed rules would not be exactly difficult, but would require the greatest care: any error would lead to the most unfortunate results.

Bunseedhur, Superintendent Settlement—Yes because proprietors would evict all such tenants, and this would be a hardship as proprietors had not generally this power before. The Courts would find great difficulty in the practical application of the rules.

Bukhtawur Lal, Superintendent of Settlement—No; and the status of proprietors would be raised thereby and the application of the rules would not be difficult.

Sooruj Koul, Tahsildar—Yes, the rule would bear hardly on the tenant.

PESHAWUR DIVISION.

Major F. R. Pollock, Commissioner—No; thinks that a three year's warning would be unnecessary and undesirable, the other condition would not be difficult or uncertain in practice.

Question 5.—Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant, and place him in a worse position than he held before annexation or not?

(1.) That the eviction be by decree of Court.

(2.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(3.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(4.) That two or three years warning be previously given.

(5.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere, or find for himself other profitable employment.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

PESHAWUR DISTRICT.

D. C. Macnabb, Esquire, Deputy Commissioner—No, not if the land were required for the proprietor. Suggests modifications in the rules for eviction. Sees no difficulty in the enforcement of the rules, but anticpates uncertainty.

HAZARA DISTRICT.

Captain E. L. Ommanney, Officiating Deputy Commissioner—No; objects to rules 1 to 4. There would be no difficulty in practically enforcing the two last rules.

KOHAT DISTRICT.

Lieutenant N. Cavagnari, Officiating Deputy Commissioner—Question not fully replied to; but generally objection is made to the proposed rules on the ground that their enforcement would be difficult and uncertain and the status of the tenant would not be improved thereby.

J. B. Lyall, Esquire, Officiating Settlement Commissioner—No, not on the ordinary twenty years or two generation tenant, but with regard to tenants of the ex-proprietor class thinks they should be entitled to receive the full value of their interest in the land, calculated in the way prescribed in Financial Circular LIV of 1859, for compensation to hereditary tenants whose land had been taken up for public purposes.

R. P. Nisbet, Esquire, Settlement Officer Goojranwala—Does not answer the question as stated, but argues in favor of eviction by decree of Court, with full compensation to the tenant for all improvements, instead of the system of giving protective leases in commutation of the right of occupancy.

Replies to the 7th question on the subject of

TENANT RIGHT IN THE PUNJAB.

Question 7.—Do you consider that a rule to the effect that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

DELHI DIVISION.

Lt. Col. W. McNeile, C. S. I., *Commissioner*—Yes, otherwise proprietors would be perpetually ousting tenants-at-will and much harassing and annoyance would result.

GOORGAON DISTRICT.

Lt. Col. J. M. Cripps, Deputy Commissioner—Does not answer the question as stated. Thinks that tenants recorded as *tenants-at-will* should be allowed to contest the correctness of the entry in the settlement record.

DELHI DISTRICT.

D. Fitzpatrick, Esqr., Offg. Deputy Commissioner—Would not give any artificial authority to any entry in the settlement record. Offers no opinion as to whether a right of occupation should accrue by mere length of occupancy during British rule.

Rae Bunsee Lal, Extra Assistant Commissioner—Yes; the tenant should not be allowed to alter his status, otherwise proprietors would be continually changing their tenants to prevent their acquiring a right of occupancy.

KURNAUL DISTRICT.

Capt. J. Parsons, Deputy Commissioner—Yes; a tenant should not be converted into a virtual joint proprietor by length of occupancy.

Mithun Lal, Extra Assistant Commissioner—Yes.

Sham Lal, Extra Asistant Commissioner—No; because the existing rights of occupancy have been created by length of occupancy.

HISSAR DIVISION.

J. Naesmyth, Esqr., Commissioner—Yes; any change of status of the tenant should rest with the proprietor.

HISSAR DISTRICT.

Capt. J. Forster, Offg. Deputy Commissioner—Yes; a tenant-at-will should not be allowed to alter his status except by consent of the proprietor.

Question 7.—Do you consider that a rule to the effect that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

Syud Jumal Ali, Extra Assistant Commissioner—(Has failed to apprehend the drift of the enquiry.)

Peer Buksh, Extra Assistant Commissioner—Yes; a tenant-at-will should not be allowed to alter his status except on the ground of error in the settlement record.

ROHTUK DISTRICT.

Major J. Fendall, Deputy Commissioner—Yes; no length of occupancy should entitle a man to alteration of status.

C. W. Lennox, Esqr., Extra Assistant Commissioner—Yes; except where proprietor had for some consideration entered into an engagement not to evict.

Pertab Sing, Extra Assistant Commissioner—Yes.

Amanut Ali, Tehsildar—(Has failed to apprehend the drift of the enquiry).

Gholam Nabbee, Tehsildar—Yes; except with consent of proprietor.

Hurjeewan Lal, Tehsildar—No; his claims to the higher status should be taken into consideration on revision of settlement.

Ikrar Ali, Tahsildar,—Yes; no length of occupancy should be admitted as a claim to obtain a higher status.

SIRSA DISTRICT.

Lt. Col. H. A. Dwyer, Deputy Commissioner—Yes; any other rule would be unfair to the proprietor.

Mehtab Sing, Extra Assistant Commissioner—Yes; the rule proposed is advisable.

UMBALLA DIVISION.

Col. R. G. Taylor, C. B., C. S. I., *Commissioner*—Yes; there is certainly no necessity to create new rights of occupancy.

Question 7.—Do you consider that a rule to the effect that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

UMBALLA DISTRICT.

C. P. Elliott, Esqr., Deputy Commissioner —Yes; looking on the class of hereditary cultivators as highly objectionable would not encourage its extension.

G. Thomson, Esqr., Extra Assistant Commissioner—Yes; would retain the existing rule to this effect.

Madhopershad, Extra Assistant Commissioner —(Has misapprehended the meaning of the question).

Adjoodhia Pershaud, Tehsildar—Yes.

Adjooodhia Pershaud, Revenue Sheristadar —Yes.

LOODIANA DISTRICT.

Major W. Paske, Offg. Deputy Commissioner —Yes.

T. Roberts, Esqr., Assistant Commissioner— Does not think an absolute rule of this kind advisable. Cases might arise in which a tenant-at-will might, by length of occupancy, acquire a right of continued occupancy.

Rae Moonna Lal, Extra Assistant Commissioner—Yes, the proposed rule is advisable.

No replies from Simla.

JULLUNDUR DIVISION.

T. D. Forsyth, Esqr., C. B., *Commissioner* —Yes.

JULLUNDUR DISTRICT.

G. R. Elsmie, Esqr., Deputy Commissioner —Certainly.

Question 7.—Do you consider that a rule to the effect that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable ?

R. Spencer, Esqr., Extra Assistant Commissioner—Yes; errors however in the settlement record in regard to the tenant's status should be corrected.

Pundit Motee Lal, Extra Assistant Commissioner—Yes; otherwise proprietors would be always evicting their tenants-at-will.

Sooltan Ali, Extra Assistant Commissoiner—Yes.

Hissamooddeen, Tahsildar—Yes; no change of status should take place except with consent of proprietor given for some special reason.

Oodey Ram, Tahsildar—No; because the existing rights of occupancy have been given on the ground of long occupancy.

HOSHYARPORE DISTRICT.

H. E. Perkins, Esqr., Deputy Commissioner—Yes, certainly.

A. Donald, Esqr., Judge Small Couse Court—Yes; any other rule would be unjust to the proprietor.

Dewan Dya Shunkur, Extra Assistant Commissioner—(Has not understood the meaning of the question).

Dass Mull, Tahsildar—Yes; except in cases of error in the recorded status of the tenant-at-will.

Sheopershaud, Tahsildar—Yes.

Luchman Dass, Tahsildar—No; his status should be altered by long uninterrupted occupancy.

KANGRA DISTRICT.

Major E. H. Paske, Offg. Deputy Commissioner—No. Thinks that tenants-at-will who have cultivated for long periods shoud

Question 7.—Do you consider that a rule to the effect that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

obtain rights of occupancy subject to the conditions specified in question 5.

UMRITSUR DIVISION.

UMRITSUR DISTRICT.

Kaim Ali, Extra Assistant Commissioner, and Agha Kulb-i abid, Extra Assistant Commissioner—Would not let any length of occupancy create a hereditary right.

SEALKOTE DISTRICT.

Major Mercer, Deputy Commissioner—Yes; to prevent the periodical eviction by proprietors of their tenants-at-will.

Sirdar Chunda Sing, Sirdar Urjoon Sing, Raja Sahib Dyal, Sirdar Shumsher Sing—Proprietors will never allow such a right to spring up. No length of holding should therefore suffice to confer a right of occupancy.

Wuzeer Ali, Extra Assistant Commissioner—The same.

LAHORE DIVISION.

F. Cooper, Esqr., C. B., Commissioner—Yes; but it should be allowed if the proprietor wish it and the tenant has occupied for a length of time and has been loyal throughout.

RAWUL PINDEE DIVISION.

RAWUL PINDEE DISTRICT.

Hookum Chund, Extra Assistant Commissioner—No; it will be beneficial to the proprietor as tenants-at-will do not improve the land.

Bishen Sing, Tahseeldar—Yes; under no circumstances allowable.

Mehdee Khan, Tahseeldar—Yes; he should not alter his status, for clearly the object of Government is to increase the power of the proprietors over their tenants.

Question 7.—Do you consider that a rule to the effect that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

Kishen Kour, Lumberdar—Yes; it should not be allowed.

Rajadha Ruttun Chund—Yes; because length of occupancy was not the chief ground for forming the privileged class of hereditary tenants, but because they had paid revenue and borne losses on equal terms with proprietors.

JHELUM DISTRICT.

Lieutenant Colonel Bristow, Deputy Commissioner, and F. E. Moore, Esq., Assistant Commissioner—Yes;—the status should not alter.

SHAHPORE DISTRICT.

Captain W. G. Davies, Deputy Commissioner—Yes; the term of occupancy should not confer a right of occupancy. Our object is to get rid of a class who are an incubus on the land—this would be to perpetuate the evil and lead to capricious evictions and inattention to cultivation.

Ram Sahae, Tahseeldar—Yes; he should not be allowed to alter his status: proprietors would be always ousting to prevent the right of occupancy growing up. Tenants would take no pains in cultivating. Both would suffer. The relationship should rest on mutual benefits and settle itself.

GOOJRAT DISTRICT.

Captain Waterfield, Settlement Officer—Yes; no alteration now allowable, for the claims which led to the higher status being awarded cannot be acquired by any tenant-at-will since annexation. He has incurred no responsibility. Also impolitic, as it would be considered a *fraud.*

Mirza Azim Beg, Extra Assistant Commissioner; Bunseedhur, Superintendent of Settlement; and Sooruj Koul, Tahsildar—Yes; no alteration of status should be allowed.

Question 7.—Do you consider that a rule to the effect that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

Bukhtawur Lal, Superintendent of Settlement—No; their status should be raised, because some have sunk wells, broken up waste, lost proprietory rights elewhere—paid losses, &c.

PESHAWUR DIVISION.

Major F. R. Pollock, Commissioner—Yes; I would increase the value of land, and there is no reason why mere length of occupancy should create a right hampering the proprietor and depreciating his property.

PESHAWUR DISTRICT.

D. C. MacNabb, Esqr., Deputy Commissioner—Yes; unless the landlord of his own will grants him leases for terms of years.

HUZARA DISTRICT.

Captain E. L. Ommanney, Officiating Deputy Commissioner—Yes; to alter his status would be to interfere with the rights of property.

J. B. Lyall, Esqr., Officiating Settlement Commissioner.—Yes; but would allow such tenants also if evicted to sue for compensation and plead a special agreement.

R. P. Nisbet, Esqr., Settlement Officer, Goojeranwalla—Yes; a proprietor would not allow an inferior tenant to acquire a superior status.

Replies to the 8th question on the subject of
TENANT RIGHT IN THE PUNJAB.

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable?

DELHI DIVISION.

Lieutenant Colonel W. McNeile, C. S. I., *Commissioner*—Believes that the operation of our system has tended to embitter the relations between the two classes, but is not prepared to quote the facts in support of this opinion.

GOORGAON DISTRICT.

Lieutenant Colonel W. Cripps, Deputy Commissioner—Does not think that in the districts known to him any bitter feeling has been roused by the action of our system.

DELHI DISTRICT.

D. Fitzpatrick, Esqr., Officiating Deputy Commissioner—Has no doubt that we have occasioned much unfriendly feeling among the agricultural classes, because while creating a valuable property in land we have failed to prescribe who is to benefit by it.

Rae Bansee Lal, Extra Assistant Commissioner—Dwells much on the effect of our system in destroying the subjection of the tenant to the proprietor and so leading to endless disputes and difficulties.

KURNAL DISTRICT.

Captain J. Parsons, Deputy Commissioner—By our system tenants have been favored at the expense of proprietors, which has naturally resulted in bitterness of feeling and jealousy.

Mitthun Lal, Extra Assistant Commissioner—Ill-feeling has been created owing to the want of care in recording the status cultivators and by the grant of occupancy rights to certain tenants.

Sham Lal, Extra Assistant Commissioner—Our system has caused ill-feeling by favoring tenants at the expense of proprietors. Harmony between the two classes is only seen where there is a great demand for labor.

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable?

HISSAR DIVISION.

J. Naesmyth, Esqr., Commissioner—Does not consider that the operation of our system has mischievously affected the relations between the two classes—any change of feeling that has taken place for the worse has resulted from the rise in affluence of proprietors and from there not being the same demand for labor now as formerly.

Hissar District.

Captain J. Forster, Officiating Deputy Commissioner—Does not believe that the operation of our system has led to unfriendly feelings between the two classes as a rule.

Syud Jumal Ali, Extra Assistant Commissioner—A bitterness of feeling has arisen because under our system the hereditary tenant enjoys all the profits of cultivation.

Peer Buksh, Extra Assistant Commissioner—The same. Proprietors do not do get their dues—where "buttai" prevails the proprietor's share of the produce is sometimes equal to twice the "jumma"—whereas hereditary cultivators never pay a "malikana" (cash rent) higher than 25 per cent., on the revenue!

Rohtuk District.

Major J. Fendall, Deputy Commissioner—Landlords are disgusted because they receive no rent from their hereditary cultivators. On the whole considers the relations between the two classes satisfactory.

C. W. Lennox, Esqr., Extra Assistant Commissioner—Under our rule the value of land has risen greatly—but where land is in the occupation of hereditary cultivators the proprietors are debarred from sharing in the benefits of this rise in value, and hence arise disputes and ill-feeling.

Purtab Sing, Extra Assistant Commissioner—Replies to the same effect.

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable?

Amanut Ali, Tehsildar—It has caused ill-feeling between proprietors and such tenants as have obtained rights of occupancy, because the latter have been placed in too independent a position and monopolize all the profits and cultivation.

Gholam Nubee, Tehsildar—Replies to the same effect.

Hurjeewun Lal, Tehsildar—Replies to the same effect.

Ikrar Ali, Tehsildar—Replies much to the same effect.

SIRSA DISTRICT.

Lieutenant Colonel H. A. Dwyer, Deputy Commissioner—Ill-feeling has been the result as regards the proprietors and hereditary cultivators, because the former feel that a status, as good as their own—one of our own creation—that existed anterior to British rule—has been conferred on persons who had no right to it by law, equity or custom. Is unable to quote facts in illustration of this opinion.

Mehtab Sing, Extra Assistant Commissioner—Appears to have misapprehended the meaning of the question.

UMBALLA DIVISION.

Col. R. G. Taylor, C. B., C. S. I., *Commissioner*—(Gives no reply to this question.)

UMBALLA DISTRICT.

C. P. Elliott, Esquire, Deputy Commissioner—Does not believe that as a rule unfriendly feeling exists between the two classes.

G. Thomson, Esquire, Extra Assistant Commissioner—The same.

Madhoopershad, Extra Assistant Commissioner—It has produced undoubted ill-feeling. Sufficient care was not taken at Settlemen in the classification of tenants, and those who obtained rights of occupancy rightly or wrongly are now able to defy their landlords and withhold from them their dues.

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable?

Adjoodhia Pershad, Tehsildar—The same.

Ajoodhia Pershad, Revenue Sheristadar—The same.

LOODHIANA DISTRICT.

Major W. Paske, Offg. Deputy Commissioner—It has produced unfriendly feeling between proprietor and tenant, by rendering the latter more independent of the former. Does not recollect any particular case in point.

T. Roberts, Esquire, Assistant Commissioner—Has not observed any general feeling of unfriendliness between proprietor and tenant as the result of our system.

Rae Moonna Lal, Extra Assistant Commissioner—It has produced ill-feeling between proprietors and tenants with rights of occupancy, because the former do not obtain a fair rent from the latter, and in some cases none at all.

No replies from Simla.

JULLUNDUR DIVISION.

T. D. Forsyth, Esquire, C. B., *Commissioner*—Gives an instance where the unfriendly feeling caused by our rules between proprietors and tenants led to a murder, and refers to other instances in the Lahore district, where fights had arisen from the same cause.

JULLUNDUR DISTRICT.

G. R. Elsmie, Esquire, Deputy Commissioner—Gives no decided answer to this question, but says that much unfriendliness does undoubtedly exist between the two classes in parts of the district.

R. Spenser, Esquire, Extra Assistant Commisioner—It has led to ill-feeling between landlords and hereditary cultivators. Ascribes this to the permanency of the latter's tenure, the fixed character of the rent, and the power of the tenant to sub-lease, all regarded by the proprietor as surpations of his rights.

Pundit Motee Lal, Extra Assistant Commissioner—The same. There is however no ill-feeling where the status of hereditary cultivator has been conferred on the tenant with the proprieter's consent.

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable?

Sooltan Ali, Extra Assistant Commissioner —The same. Proprietors in such cases see that they are but proprietors in name, for the hereditary tenant monopolizes all the profits, while the tenants grudge the proprietors even the barren title.

Hissamooddeen and Oodey Ram, Tahsildars —Reply generally to the same effect.

HOSHYARPORE DISTRICT.

H. E. Perkins, Esquire, Deputy Commissioner—Believes that where malikana was not fixed at settlement the operation of our system has been most prejudicial; the proprietor is dissatisfied with having only the name, and the tenant, having the substance, desires also the name: hence constant bickerings and ill-feeling.

A. Donald, Esquire, Judge Small Cause Court—Gives the same reply to this question.

Dewan Dya Shunkur, Extra Assistant Commissioner; Doss Mull Tahsildar; *Sheopershad, Tahsildar; and Luchhmun Dass, Tahsildar*—All bear testimony to the ill-feeling existing between proprietors and those of their tenants who cannot be ousted from their holdings and who pay little or no rent.

KANGRA DISTRICT.

Major E. H. Paske, Offg. Deputy Commissioner—Does not think that our system has created ill-feeling between the two classes.

UMRITSUR DIVISION.

UMRITSUR DISTRICT.

Kaim Ali, Extra Assistant Commissioner —A very bad feeling has sprung up on account of cultivators being declared hereditary, and nearly all the profits being made over to them. Quotes several instances of prolonged litigation resulting from the Courts awarding arbitrary conditions between the two classes.

Aga Kulb-i-Abid, Extra Assistant Commissioner—Considers that from the arbitrary way in which cultivators were originally recorded as hereditary a great deal of bad feeling has been caused. Quotes four instances.

SEALKOTE DISTRICT.

Major Mercer, Deputy Commissioner—In Umritsur much ill-feeling resulted from the creation of "hereditary cultivators," who be-

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especialiy as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable?

came insolent and independent, sometimes paying no rent, and so virtually proprietors, yet unable to improve the estate without the consent of the proprietors, which the latter refused from jealousy and ill-feeling.

Sirdar Chunda Sing—Good feeling has diminished.

Sirdar Urjoon Sing—Cultivators who are hereditary do not respect proprietors, profits of land have increased while revenue and rent have diminished.

Raja Sahibdyal—In consequence of the pushing of the cultivators, those who were new wanting to be hereditary and those who were old wanting to be proprietors, no kindness on the part of the proprietors, and no respect on the part of the cultivators remains, and much litigation has taken place.

Sirdar Shumsher Sing-Enmity has arisen. Gives two instance of litigation. Cultivators do not respect proprietors.

Wazeer Ali, Extra Assistant Commissioner—Thinks that a very bad feeling has arisen between the two classes on account of the permanent tenure having been introduced. Hereditary cultivators treat proprietors without respect, and proprietors are helpless. Gives five instances of litigation.

LAHORE DIVISION.

F. Cooper, Esquire, C. B., *Commissioner*—Acrimonious disputes have been the result of tenants being recorded as possessing rights in village common lands.

RAWUL PINDEE DIVISION.

Rawul Pindee District.

Hookum Chund, Extra Assistant Commissioner—Our system has created friendly feeling between the two classes, and the proprietors are only unfriendly toward the tenants, 1st who have opposed them by suits in Court (gives instances) ; 2nd, who make difficulties in paying rent ; 3rd, who retain their lands when the proprietor has not sufficient for his own cultivation. Adds that proprietors are better

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause in this mainly attributable ?

off in the matter of influence than under Sikh rule, when one proprietor often held the putta and the coparceners were treated as tenants-at-will.

Bishen Sing, Tahsildar—The relationship is friendly save in villages where at regular settlement litigation took place between the two classes. Dissatisfaction exists where the proprietor is in difficulties for want of land and the tenant has plenty.

Mehdee Khan, Tahsildar—All friendly feeling has been destroyed, owing to the daily recurring endeavours on the part of the tenants to assert their independence. Quotes instances.

Kishen Kour, Lumberdar—The feeling is generally friendly, except (1st) where tenants throw land out of cultivation for grazing (2nd) where they use up green crops for fodder, (3rd) where proprietors take more than their share of the produce.

Rajadha Ruttun Chund, Kanongoe—The system has produced enmity between the two classes 1st because proprietors cannot raise their rents; 2nd, because the independence of the tenant is unbearable to the proprietor. These feelings will not be allayed until each is put into his proper position and the proprietor has more powerover his tenant.

JHELUM DISTRICT.

Lieutenant Colonel Bristow, Deputy Commissioner—Proprietors regard with unfriendly feeling the whole class of hereditary cultivators. The revival by Settlement Officers of dormant proprietary rights has caused bitter enmity. Quotes an instance. At the same time thinks that such rights should be restored.

F. E. Moore, Esquire, Assistant Commissioner—The proprietors regard hereditary tenant with unfriendly feelings on account of the low rent the latter pay ; the former do not know that they can raise the rent.

SHAHPORE DISTRICT.

Captain Davies, Deputy Commissioner—Relations between the two classes have been much embittered by the favor shown to the

Question 8.—State how the operation of our system thus for has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable ?

tenantry. Proprietors see tenants daily growing richer while they themselves receive a mere pittance from the land. Something must be done, but different from that proposed, which would be as unjust to the hereditary tenants as our former treatment was to the proprietors.

Ram Sahae, Tahsildar—Where grain payments exist both parties are satisfied. Tenants paying in cash have grown wealthy at the expense of proprietors, who chafe under a system that gives them such small profits. Instances villages where the two classes were formerly on the best of terms and are now on the very worst.

GOOJRAT DISTRICT.

Captain Waterfield, Settlement Officer—Our system has produced a kindly feeling towards the tenant-at-will and an unfriendly one towards the hereditary tenant, often a kumeen who is now independent. There is now no community of interest between the two classes. Mutual good feeling must be brought about. Suggests how this may be done, and if not how the class may be absorbed to the great advantage of village communities.

Mirza Azim Beg, Extra Assistant Comissioner—Formerly there was no clashing between the two classes, now a struggle for the profits and ill-feeling. Because nearly all profits are enjoyed by hereditary tenants, because the latter are too independent, because proprietors require more land for their increasing families, and lastly because proprietors see the position of "kumeens" (village servants) now much altered.

Bunseedhur, Superintendent of Settlement—The two classes are generally on good terms ; all have been employed in breaking up waste land ; there have been no evictions : rents have been raised and proprietors satisfied ; tenants, also content have begun, sinking wells and spending capital on the land.

Bukhtawur Lal, Superintendent of Settlement—Enmity has been the result, as proprietors now have no power over their tenants.

Sooruj Koul, Tahsildar—Very friendly except where payments are made in grain.

Question 8.—State how the operation of our system thus far has affected the relations of tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself to what cause is this mainly attributable.

PESHAWUR DIVISION.

Major Pollock, Commissioner—The new rights created by our Government have engendered bad feeling between the two classes. Thinks that men have been too easily recorded hereditary cultivators, and this has afterwards led to litigation and bad feeling.

PESHAWUR DISTRICT.

D. C. McNabb, Esquire, Deputy Commissioner—Our sytsem has had the worst effect on the relations between landlord and tenant. It has destroyed the feeling of dependence and respect for the landlord that used to be felt by the tenant here as strongly as in Scotland a century ago. Constant litigation and some times bloodshed has been the result.

HUZARA DISTRICT.

Captain E. L. Ommanney, Deputy Commissioner—The result of our system has been to raise the tenant and depress the landlord, thus creating an unfriendly feeling between the two classes. In former times the tenant looked up to his landlord, and the two were bound together by ties of mutual interest. Cites instances in support.

J. B. Lyall, Esquire, Officiating Settlement Commissioner—In villages in which before annexation, proprietors held a strong position unfriendliness often exists, and this is due, (1) to our intolerance of the Metazer (buttai) system, which has led us to confer rights of occupancy on tenants and then to encourage them to sue for conversion of grain rents into cash, fixed nearly always for the whole term of settlement. In this way the tenant who was only entitled to hold in preference to other tenants at customary rates of "buttai" acquired a position somewhat resembling that of an English copyholder, enjoying a large share of the profits of cultivation; (2) to the destruction thereby of the old feeling of dependence on the proprietor; (3) to the apparent impossibility under our system of his obtaining more land for his own cultivation even when really required when the greater part of his holding was in the hands of hereditary cultivators.

R. P. Nisbett, Esquire, Settlement Officer—Does not answer the question as to the past, but with reference to the revision of the status of tenants going on, deprecates sudden and violent changes, as calculated to beget distrust and anxiety in the minds of the agricultural community, and to create among all classes a want of confidence in the good faith of Government, stating as his reason that there is no general complaint among any class.

Selections from replies received to questions circulated with Punjab Government letter No. 2-328, dated 29th May 1867.

SELECTIONS FROM REPLIES TO QUESTIONS CIRCULATED WITH

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, 20 years or two generations? And were such tenants, as *a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

(I.) That the eviction be by decree of Court.

(II.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

The Honorable E. L. Brandreth, Commissioner—Rawul Pindee Division—I have no doubt that some few of the more influential proprietors who had the entire revenue management of their villages did, as a fact, evict tenants, and dispose of their fields very much as they pleased: and where this was the case, the tenants have sometimes been erroneously recorded as possessing rights of occupancy.

3. But as a rule the proprietors certainly did not evict such tenants as those that have been recorded as "mouroosee" in the settlement paper, and this is not less clear from the papers now submitted than it was distinctly admitted by Mr. Prinsep himself, the great champion of the landlords: he said it is universally admit- " ted that the landowner had the right to evict " the tenant but that this right was seldom * * exercised in case of resident cultiva- " tors, who held the land from the founding of " the village or from generation to generation " *(Letter to Financial Commissioner, No.* 196, 28th *April* 1863*)*, the evidence as regards the fact therefore being thus in favor of the tenant; neither does it seem to me, that it can be inferred from the nature of the tenure that the landowners had any such right; for, as the agent of the Sikh Government collected from landowner and tenant alike in most cases, or in other cases made some exceedingly small allowance to the landowners, it cannot reasonably be inferred that tenants who were thus under the protection of the Sikh Kardars, and in the produce of whose land the so-called landowners had such an exceedingly small interest, if any at all, were liable to ejectment by the landowners.

4. But to this state of things there is an exception where the landowner had the revenue management and himself collected the produce rent from the tenant; here the inference from the nature of the tenure is in the landowner's favour, and though it might not now be advisable, since evictions even under these circumstances were of rare occurrence, and after the protection hitherto extended to such tenants by our settlement proceedings, to make all such tenants hereafter liable to be ejected at the sole pleasure of the landowner, yet as there is more evidence in favour of the landowner ejecting where he wants the land to cultivate himself, and as there seems a strong feeling that he ought to have the power of ejectment under such circumstances, I think he ought to be allowed to resume the land of this class of tenants, or as much of it as may be necessary to make the land under his own cultivation equal to an entire "plough" after giving one or two years notice to the tenant.

PUNJAB GOVT. LETTER No. 2—328 OF 29TH MAY 1867.

5. But the greater the restrictions we place on the ejectment of tenants the greater the facilities we ought to give for enhancing the rent where it is insufficient. In some districts grain rents have been commuted into rents in money, in the most arbitrary manner, without any regard to the real value of the grain rents, and in other cases the landowners have not received a sufficient, or in some cases any, share of the large portion of the rent formerly taken by the Sikh Government, which the British Government, has virtually resigned by its lighter rate of assessment. Of such a reduction of assessment those persons who have been recognised as the landowners, and not the mere tenants, ought certainly to derive the principal benefit.

6. Some provisions therefore regarding the enhancement of rent are in my opinion even more required as part of a tenant right code than provisions regarding the ejectment of tenants.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Colonel R. G. Taylor, C. B., C. S. I., *Commissioner Umballa Division.*—My Revenue education has been desultory, and I am but a poor authority in such matters.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holding?

2. Yes, as a rule they did, but this was chiefly from the cause mentioned by several officers, namely, that men were more scarce than at present, and with large armies to keep up and other departments of the public service affording employment on a lavish scale it was difficult to keep men at home, and the loss of a cultivator resulted in the consequent non-cultivation of a tract of land; and no doubt this mutual dependence of proprietor and tenant begat a feeling akin to right for the latter in the minds of both, though it might not be recognized as the law of the land.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. In practice this actually gives a right to permanent occupancy if not actual proprietorship, paying only a fixed malikana to the original owner of the soil.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. Tenants-at-will have frequently been evicted; the other class, when they could prove their rights have been protected by tho Courts.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

5. Yes, I think it would be hard at this stage to throw over the hereditary tenant after all we have done and said about him; throwing open the matter would result in eager efforts on the part of the grasping proprietor to get rid of all about him who held any

(I.) That the eviction be by decree of Court.

(II.) That it be shown to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right then the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupatoin.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

thing by any right or prescription, in order that he might have a clear field to screw the largest amount possible out of his land. As I have said above, I do not think that as the subject of a native power, always liable to have to struggle for its existance, the proprietor of land in the Punjab, or in India generally, was ever in that easy secure position that an English landlord occupies: he was more dependent on the assistance and good will of his tenant, and that even under a Native Government he gave the latter a position different from that of mere dependants.

We have made all safe: have secured the proprietor from spoilation and violence: and have improved communications and safety to property of all sorts; and thus have greatly enhanced the value of land, and all the advantages in connection with it. I should object in principle to any legislation which threw all the profits of this result without reservation into the pocket of the proprietor. Before we came they struggled together, he and his tenant. We introduce a new regime and improve the position of all. I would not then let one, and the least numerous, class at once grasp all the fruits.

We have the right by the benefit we have conferred to arrange how it should be enjoyed, and to protect the weaker, but by far the most numerous, and I should be inclined to say usually the class most deserving consideration, from utter ruin in the matter.

What I have written above is chiefly with reference to the class recognised as hereditary cultivators. With regard to the proposal in clause 7 there is certainly no necessity to create new members of the class; and though my own prejudice, based on the above view that the Indian proprietor was not from conventional practice the absolute ruler of his soil that an European proprietor is, would be to confer certain rights on cultivators after a prolonged period of occupancy; still I think perhaps it is better to let it alone, the effect of which will be as hereditary cultivators lapse gradually to allow the proprietor to emerge into the more independent and unshackled position occupied by an owner of land in other countries.

With regard to those who have been acknowledged as hereditary cultivators, I think it would be quite fair, as the value of land improves, that they should be called on to submit to a revision of the terms framed between them and the proprietor when the profits from the land were on quite a different scale. This could not be done where the amount of per-centage to be received by the owners of the soil has been fixed at the settlement, but it might be arranged for in new settlements through which the rights of hereditary cultivators have to be preserved.

PUNJAB GOVT. LETTER No. 2-328 of 29th MAY 1867.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Major W. McNeile, C. S. I., *Officiating Commissioner Delhi Division*—Between ten and eleven years' civil employ in the Punjab (actual residence).

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as *a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. I am of opinion that, before annexation proprietors did, as a rule, refrain from ejecting tenants; and tenants did ordinarily calculate on continued occupancy; but I am not of opinion that this state of things resulted on either side from any particular regard to the length of the tenancy. I think it resulted from considerations of his own interests on the part of the proprietor, upon whom, in most casts, the eviction of a tenant entailed the loss of rent. But where no such consequence was to be apprehended, that is, where the propreitor wanted land for his own cultivation or that of one of his family, my observation is to the effect that he used to evict without hesitation, the feeling of the community as well as a sense of fairness leading him, no doubt, to evict a new rather than an old tenant, if he had the choice, and if the lands of both were equally suitable for his purpose.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. The causes which operated preferentially in favor of an old tenant over a new one, probably gave a still higher status to the reclaimer of waste; but this is an inference only, and the practice must have varied very much at different times and places.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise:—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. Until quite recently it has, so far as my experience goes, been the custom of the Revenue Courts to accept the settlement record as determining whether or not a tenant was liable to eviction. The landlord gained his case against a "ghair moroosi," the "moroosi" defied the landlord. In the classification of these two sorts of tenants, I think, the settlement records have, generally speaking, erred largely in favor of the tenants. Evictions by the Revenue Courts have consequently been few; and many, that ought to have been permitted, have been prevented. Similarly, when dispossession without the intervention of the Courts has taken place, the tenant, armed with his "moroosi" register, has recovered entry. I have heard many complaints made by proprietors about this. Proprietors, they ask of, what? Not of the land apparently, for we can't get it. Not even of rent, in excess of revenue, sometimes. And the value of a proprietary right, which turns out to mean only a reversionray interest, contingent on an improbable event, was not very clear to these persons. The Civil Courts have now taken over this class of suits, and the settlement record is not to be the infallible referee, but the change is too recent to admit of an opinion being given as to its working.

5. Do you consider that a rule permitting the proprietor to evict such tenents on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not.

(I.) That the eviction be by decree of Court.

(II.) That it be shown to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain.

5, 6. The 5th and 6th question must be taken together; for whether or not, a tenant of the specified class will be in a worse position when a British Court intervenes to decide occupancy disputes between him and his landlord, than he was when the landlord or kardar had the matter in his own hands, depends on the rules which are to guide the Court; and these rules must be framed, not only with regard to their justice theoretically, but also with regard to their operation, practically. One of the rules suggested, viz., "that it be shewn to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself" is an illustration of this. The rule would not be inequitable (provided of course, the tenant, in the case to which it was applied were paying a fair rent); but in practice it would be so easy of evasion as to become altogether inoperative. The proposal to give the tenant compensation for unexhausted improvements, and for expense of removal, such compensation being always assessed by arbitrators, is not, I think, open to objection; but a proviso should be added that, the landlord have the option, in every such case, of accepting the award, and paying accordingly, or of withdrawing his claim. I would not permit the tenant to take out execution, but would make the compensation decree in his favor contingent upon the landlord's doing so. As regards the length of notice to be given by a proprietor before sueing for eviction of a tenant, I consider that the interests of both parties would be best consulted by a short, rather than a long notice. Evictions should only be allowed (as now) from the commencement of the agricultural year, say from the 1st September; and notice should be served when the last previous crop has been raised sufficiently to make it the tenant's interest to continue his care until the harvest; that is, the notice should be served in April. From the rule suggested under heading 3 of the 5th question I dissent altogether.

But no regulations for the guidance of the Courts will, in my opinion, meet the difficulty as long as they are aimed only at questions of actual dispossession; for this, in nine cases out of ten, or indeed in ninety-nine out of a hundred, is not the real issue. The real issue is a question of rent; and if the spirit of Sections 17 and 18, Act X of 1859, were embodied in all Settlement Administration papers, suits to evict occupancy tenants would, I believe, be very rare. Without such an arrangement they cannot but increase, as the value of property rises, and the proprietor sees himself debarred from any share in the profits.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. The seventh question opens up that most intricate subject, the right of occupancy; and how it should be held to accrue. If from 12 or 20 years continuous posssession before a certain date, why not from the same when prolonged to a later date? Why should the accident of a Settlement stop the growth of a right? If, however, such were not the case proprietors, now fully alive to the interests at stake, would be perpetually ousting tenants-at-will; and much harassing and annoyance would result. This would be the greater evil; and I, therefore, consider that mere length of occupancy should not avail to improve a tenant's status as recorded at the time of Settlement. But I would not prohibit a tenant from contesting that record on the plea that his status at the time had not been correctly entered.

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. I am not prepared to quote facts shewing that the operation of our system hitherto has tended to embitter the relations between proprietors and tenant; but the impression on my mind is, that such has been and must be the case, owing to the partiality our system has shown to the latter class. It would be easy to write an essay upon this subject, but I have said all that will probably be expected as a reply to this question, in my answer to No. 4.

JULLUNDER DIVISION.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

T. D. Forsyth, Esquire, C. B., *Commissioner*.— As Commissioner of the Lahore Division I had good opportunities of observing and enquiring into the relations between proprietors and tenants, in three districts of different character, Ferozepore, Lahore and Goojranwalla; latterly in the Jullundur Division I have had further opportunities of observation.

2. So far as your observation and knowledge extend have you found it to be the fact that proprietors (before annexation) refrained as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. The state of the case as between proprietors and cultivator I believe to be correctly put by Mr. Temple in his report on Jullundur Settlement, para. 207—" The distinction between cultivator and proprietor was keenly " appreciated. The right of occupancy apart " from proprietary right was unknown. The " Governwent may have partially recognized " it, but the people did not; however long a " patch of land may have been occupied, the " proprietor would at his pleasure resume " it without ceremony, and the cultivator " would resign it without demur.

The fact was that " the Sikh rule pressed " severely on the landlords, who in part evaded " their burdens by saddling them on the cultivators, consequently the land-lord lost ground

" in the same proportion as the cultivators " gained it." The Kardars being held responsible for the quota of revenue demandable from them, naturally looked only to the cultivator for the crop, and cared little for the rights of dormant proprietors; and in this way cultivators came to look with a certain degree of confidence to the unmolested enjoyment of their holdings, but the proprietors seldom entirely relinquished their rights to resume the land into their own lands when it suited them to do so.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. In the Ferozepore district more particularly, and I think in the Lahore and Goojranwalla districts also, the fact of breaking up large tracts of waste lands was decidedly considered as conferring on the cultivator some extra claim to consideration both as regards rent and occupancy.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. The tendency of our Courts, in pursuance of the policy enunciated by the Government, has been to keep tenants in possession and I should certainly say that attempts to evict tenants have been largely prevented by our Courts. If time were given to make the enquiry it would be as well to ascertain from the office records to what extent this has been the result of the appeal of proprietors to our tribunals.

5. Do you consider that a rule permitting the proprietor to evict tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

(I.) That the eviction be by decree of Court.

(II.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

5. Assuming the fact before annexation to be as I have stated it, it follows as a matter of course that any conditions favorable to the cultivator when evicted would place him in a position not worse than that which he held before annexation. And I should say generally that, except where a cultivator has been at the time of settlement formally and after judicial enquiry recorded a tenant with right of occupancy, there could be no hardship in ousting any tenant provided some such conditions as those now proposed be fulfilled. I should look upon the entry in the settlement record as liable to be impugned on the ground of error.

I now consider the conditions:—

I. This appears to be a safe and necessary rule.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

II. I think this rule likely to create a good deal of difficulty in our Courts, as the objection raised by the cultivator would be that though taken ostensibly for himself, the proprietor really had taken and given the land to some other person. I am inclined to think that the whole question of eviction should turn on the compensation to be given, having paid which the owner should

7. Do you consider that a rule to the effect, that a cultivator once recorded as a

tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable ?

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable ?

be allowed to do what he likes with his land. In fact, this proposed rule could be so easily evaded that it would be reduced to a farce: for instance, a proprietor would take the land into his own cultivation for one or two years, and then make it over to some one else. How could the tenant have any remedy ? Would he be allowed to come into Court two or three years afterwards to recover his land, on the grounds that the proprietor was not cultivating it himself ?

The crucial test of the proprietor's being in earnest in his desire to take the land from his tenant, is applied by the compensation clause.

This will prevent tenants bring evicted from mere caprice or for insufficient reason.

III. This rule appears to be unobjectionable.

IV. This is very desirable and necessary.

V. This rule is quite indispensable, and as I have already said is to my mind the point on which the whole arrangement turns.

VI. I do not anticipate any difficulty whatever in enforcing the above conditions. Each case should be decided on its own merits.

VII. I think that a cultivator who has been recorded tenant-at-will in the settlement records, ought not to be allowed to alter his status by mere length of occupancy, so long as the settlement lasts.

I certainly should be against any rule which allowed a tenant-at-will to blossom into tenant with fixed rights by the mere efflux of 12 or 20 years prospectively, within the erm of settlement. Whatever is recorded in the settlement papers should have force so long as that settlement lasts.

8. I am unable to give more than one instance of unfriendliness arising out of our rules regarding tenants, but in that case the proprietor, a woman, caused the murder of a young lad, who stood between her and her property. On the death of the hereditary cultivator she sued to obtain possession of her land, but the Court maintained the rights of a son of the deceased tenant, and appointed an agent till the son should come of age. Exasperated at finding herself kept out of her property the woman hired a friend to murder the lad. The case came before me as Sessions Judge.

This of course is a very exceptional case, but there have been many instances of quarrels brought into Court between proprietors and cultivators, and I *think* actual fights between these parties in the Lahore district, the records of whic h however should be searched to test the correctness of the statement.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Captain W. G. Davies, Deputy Commissioner of Shahpoor.—I have been now thirteen years in the Punjab Commission, during which I have been largely employed in Revenue work. I was first initiated in Settlement work, as it is called, by Mr. Monckton in 1854, while that officer was revising the assessments of the Jhung district. Afterwards in 1856, I was appointed by the Chief Commissioner as an Assistant in the Googaira Settlement. Early in the following year I was transferred in the same capacity to the Mooltan Settlement. Soon after my return from England (in 1861) I was selected to revise the Settlement of the Thanesur district, and lastly, towards the end of 1862, I was transferred to this district to complete the Settlement left unfinished by Mr. G. Ouseley. This work I may add was brought to a close early in 1866.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact,* led to look forward with confidence to the unmolested enjoyment of their holdings?

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

2 and 3. Very full and complete replies to this and the following question for the whole province, will be found in the reports which were called forth by Mr. Edmonstone's Circular No. 16—685, of the 19th May 1863—and which were afterwards published *in extenso*, as a supplement to Mr. Cust's "proposed Tenant Code;" and as regards this division in particular, in Mr. Thornton's letter to the Financial Commissioner, No. 121 of the 8th September 1863; while for this district, full particulars will be found, in paras. 253 to 262 and 278 of my Settlement Report, and in the replies given by Ramsahae, Tehsildar of Khoshab, which accompany this, and very correctly describe the status of tenant-right generally as it existed here prior to annexation. I will therefore only add that it was an inevitable result of the Sikh system of revenue management, based as it was on the principle of obtaining from the land the utmost it could be made to yield, that little or no distinction in practice was observed between proprietors and tenants. While on the one hand the Sikh Kardar, whose powers were unlimited in this respect, would not allow what he would consider sentiment and a fanciful theory of rights to interfere with his and the State's interests, but, whenever land existed in quantities more than could be utilized by the proprietor himself, would freely assign it to others; *the proprietor,* on the other hand, would seldom be found over anxious to assert a claim to occupy land beyond his own immediate wants, under a system which absorbed all profits and left to the actual cultivator only just enough to support himself and family, and to keep up his agricultural stock. Under such a state of things it is needless to state that proprietors, as a rule, had no power whatever to eject tenants from their holdings, and that

the latter class knowing that they held directly from the Government officer, had little to fear from the proprietors. It follows that *as a fact* the permanency of their tenures was fully assured to them so far as *that*—the proprietary—body was concerned. In proof of the truth of the above, if any proof be needed, it will be sufficient to refer to the large number of "Boota mar" tenants along the Jhelum, Chenab and Indus rivers, to the tenants in this Division since become proprietors of their holdings, and the large class known as "Chuckdars" in and about Mooltan.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise:—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. My answer to this question is that certainly very few of the two classes of tenants described in questions No. 2 and 3, have been ejected from their holdings since annexation; but that, on the contrary, many have obtained, in this Division at least, modified proprietary rights. The correspondence published with Mr. Cust's "Proposed Tenant Code" will show that during the early years of our rule a strong feeling prevailed that this class of tenants required protection, and there is little doubt that in the early settlements the prevailing sentiment often led our Courts unduly to favor the tenant at the expense of the proprietor. A reaction has since set in very strongly, and there is reason to fear that unless it is stemmed it will carry us away in committing excesses in the opposite direction. It is therefore very proper to bear constantly in mind that under the Sikh rule there was little distinction in practice between proprietors and those tenants who by enterprise had reclaimed waste land or had been allowed to sink wells; that these often obtained concessions similar to proprietors, and where any profits were left by the Sikh tax-gatherer they certainly enjoyed a very considerable share in them, the proprietor generally contenting himself with merest acknowledgment of his superior rights in the shape of a few seers of grain to be divided between the "meerasee" and "oolma"

It will be understood that I am speaking of the state of things which existed in those parts of the Punjab with which I am most familiar.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

(I.) That the eviction be by decree of Court.

5. This is the most difficult question of all to answer, but I may state, and this statement is only a corollary to what has gone before that to evict tenants of the kind I have been speaking of, on any or all of the conditions proposed, would in my opinion place them in a very much worse position than any they held before annexation. But it must be understood distinctly to refer only to those tenants who obtained their occupancy rights by some expen-

(II.) That it be shown to the satisfaction of the Court that the land is *boná fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

diture of capital during the Sikh times, either by clearing waste or sinking wells; hundreds of others who had no such claims have doubtless obtained the status of hereditary cultivators, these do not in my opinion deserve the same degree of consideration and might be gradually dispossessed under the proposed rules. With regard to the only classes that in my opinion are entitled to special consideration, equity demands that, as practically they have hitherto enjoyed a share in the proprietary profits, so this shall be still reserved to them in whatever arrangement is determined on for securing to the original proprietor a fairer share in the profits of his land. Two plans for effecting this suggest themselves to me, both in my humble opinion preferable to the extreme measure of *total eviction.* One is that of fixing grain payments at a rate somewhat below that paid by tenants-at-will for lands of the same description. The other is a modification of the system pursued in England for enfranchising copy-holds, but instead of as *there,* compelling one or other of the two parties concerned to buy out the rights of the other, I would divide the *land itself* between them with reference to the share of the whole proprietary profits which each may on enquiry be shown to have enjoyed. With regard to the first plan, I would invite attention to the remarks of the Tehseeldar of Khoshab, and I would add my testimony to the undoubted popularity that would attend this measure—it would I believe completely satisfy proprietors and under it tenants would have no real ground of grievance. It should be well understood and borne in mind that the proprietor in the majority of instances *does not want to get rid of his tenant*, and that even if he did turn his tenant out he would have to locate some other. All he requires is a *fairer share in the profits of his land*, and there is no doubt that, regard being had to the great vicissitudes of season in this country, and the improvident habits of the agricultural population, no system is so well calculated to ensure a fair and unvarying division of the profits of tillage between proprietor and tenant as the system of "buttai," and none so likely to *work* well. The other, though not so likely to be popular with proprietors, would undoubtedly be more *equitable* than any system of total eviction with compensation, and in its ultimate results would in my opinion be far more satisfactory than the "buttai," system, for it would gradually free the land from an incubus in the shape of an occupant who *cannot improve* it, and this without causing any *apreciable* suffering. Nor do I see that with the aid of punchayets there need be any practical difficulty in carrying it out satisfactorily.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

6. Yes, I do think it would be difficult in practice to enforce *all the* conditions proposed as a preliminary to depriving a hereditary occupant of his lands. On this subject I would also beg to invite attention to the remarks of the Tehseeldar of Khoshab in regard to the class of properties where this kind of tenant is found in the greatest numbers, my experience fully confirms the truth of what he says, and it would almost amount to a prohibition to lay down a rule that a proprietor must get rid of all his "buttai" paying tenants from whom he derives so much profit, before he should touch the cash-paying hereditary tenant; and yet it would be very hard to allow the latter to be turned out of house and home (these things literally go together in this country) as long as others with inferior rights were to be found on the property. The fact is, the proposed rules appear to me to be based on a wrong assumption, viz. that the proprietor wants the land himself; in the majority of cases, my experience tells me this is not the case; as I said before, he does not want the land and could not cultivate it if he had it, what he desires is that he may obtain some real share of the profits, which under the present system he *does not obtain*, because owing to the great rise in price of late years the revenue does not represent anything like the proportion of the gross produce which it professes to represent. *This is where the shoe pinches.* The remedy proposed is, in my opinion, *unpractical* and likely to be abortive, and even if there were a better chance of its being applied without difficulty, its working would inflict a vast amount of suffering not to say positive injustice.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. I think there will be very little conflict of opinion as regards the answer to be given to this question. I would not allow mere *length of occupancy* to confer a *right* of continued occupancy, because doing so would inevitably lead to tenants being capriciously turned out solely to obviate the possibility of such rights being acquired; and one certain result of this would be inattention to cultivation, from which all three parties concerned, the State, the proproprietor, and the tenant, would suffer. While we are suffering from such rights being in existence, and are at our wits' ends to devise expedients to get rid of them and their blighting influence on land, it would be mad indeed to do aught that should have the effect of perpetuating such a state of things. The only ground that I can see would in any way entitle a tenant to change of status is where the tenant had been allowed by the proprietor to invest capital on the land comprised in his holding, but in *such cases even* it would in my opinion

be best to let the tenant make his own arrangements with the proprietor for securing to himself, by means of a long lease or otherwise, a fair return for his outlay. The less interference exercised by the officers of Government in these matters the better.

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. There is no doubt that the favor shown by us to tenants at the expense of proprietors during the early settlements has very much embittered the relations existing between the two classes. I have seen this everywhere, and as regards this district I can fully endorse all that the Tehseeldar of Khoshab has written on the subject. It must be very annoying to the proprietors to be obliged to look tamely on and see their tenants of this class growing daily richer, while they themselves are receiving a mere pittance from the land which is nominally their own. It seems unnecessary to enlarge on this subject, it is well understood by all who have been brought much in contact with the agricultural population. There is no doubt that much injustice has been done to the class of proprietors, but although feeling that it is high time a remedy should be applied, I am decidedly of opinion that it must be something different to the one proposed, or we shall end by doing as much injustice to the class of hereditary tenants as we have admittedly done to that of proprietors.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

J. B. Lyall Esqr., Settlement Officer, Kangra.—As Assistant Commissioner in Hoshiarpoor, Lahore, Goordaspoor, Kullu, and Amritsur some few opportunities; and as Settlement Officer first of Goordaspoor then of Kangra, considerable opportunities.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. If asked whether proprietors refrained from evicting such tenants when they urgently required the land for their own cultivation, I should say no. I believe that tenants put in by Lumberdars or proprietors would have been in such case evicted without hesitation, and that the tenant would not have considered himself entitled to complain. An exception to this however must be made in the case of a tenant who had been allowed at his own expense to sink a well or plant a garden or orchard : suppose such a tenant had been evicted, had complained in Sikh times, I believe that an unbiassed Sikh Court would have held that the proprietors had tacitly permitted him to get a title to the cultivation even against themselves, and would have re-instated the tenant or given him full compensation.

If asked whether proprietors as a rule refrained from evicting such tenants to put

in another tenant, I should decidedly say yes; and I should say that, *as a matter of fact*, they the tenants were led to look forward with confidence to the unmolested enjoyment of their holdings, as long as the proprietors did not require the land for their own cultivation, and as long as they, the tenants, did not seriously misbehave themselves. It must be remembered that ordinarily the rent did not go to the proprietors in those days: the Government or Jagirdars took the real rent direct from the cultivator by buttai or kunkoot, and the proprietors got only proprietary dues—biswee or seermannee—if they got anything at all. Even however where the proprietors were responsible to the Government for the revenue, and collected by buttai from the tenants, such rates of buttai, as well as the rates of proprietary dues, were not by competition but by usage of the tract of country; the usage only varied from special causes at long intervals; such variations were not anticipated by the parties, *i. e.* proprietors and tenants, when they entered into the contract, that is when the proprietors induced the tenant to settle down in the village. The understanding between the parties at the time I believe to have ordinarily been, that the tenant would hold at customary rates during good behaviour, and not that the proprietor was at liberty from mere caprice to turn out the tenant, and put in another; the payments by tenants to proprietors not being guided by competition, the great inducement which leads landlords to change their tenants was absent, the supply of tenants also was not equal to the demand, and the great ambition of the proprietors was to have settled tenants.

Although I hold that the implied agreement between the parties was that the tenant was not to be turned out in favor of another without cause, yet I do not mean to assert that a Sikh Court would have reinstated an ordinary tenant on such grounds. There were no regular Courts or regular laws in those days, and society seems to me to have been as it were composed of a gradation of "Hakimees" or Lordships. One upper Hakim was averse to interfere with the lower Hakim in favour of the latter's dependants. The village proprietors and Lumberdars were the tenant's Hakims, and doubtless the tenants were aware that in case of a dispute they had nothing but their own strength or the former's good faith to depend upon.

In the above reply with regard to the point of eviction I have had in mind those villages only in which before annexation there was some family which was actually in

possession of the privileges and powers pertaining by custom to the position of a village "malik" or, as we translate it, a village proprietor. But the really difficult tenant-right cases do not turn up in such villages, but rather in those in which the village proprietors had in practice before annexation lost all but the name, or had retained nothing but a "seermanee" due, or in which it is doubtful whether any real village proprietorship ever existed, and whether the whole community might not more correctly at last settlement have been declared to consist of Lumberdars, and Crown tenants.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. The mere fact that a cultivator had reclaimed waste lands would not have much weight, in my opinion, if the proprietor gave him such waste to reclaim. Ordinarily speaking, a tenant who reclaimed waste lands was allowed to pay at light rates, or to hold free of rent for a few years or a few harvests. In this way his extraordinary expenses or labour were made good to him in the first few years.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. In talking of evictions I have in mind evictions from real tenancies. A man may be known to be the "asamee" or tenant of a certain proprietor or of a certain proprietary community: of whom he holds certain fields, the same or nearly the same land to cultivate which he or his father settled upon, and procured their stock of farm cattle in. This I call his real tenancy, as distinguished from other fields in the same or another village which he may cultivate now and again merely to keep his hands full, in the same way that one proprietor often cultivates a few fields of another proprietor for a time.

I have observed some evictions of tenants of both classes, but not very many, and of those very few by order of Court. A special cause also is generally to be found for such evictions. Either the proprietors really require the land for their own cultivation, or by accident enmity has arisen, or by some interference of officials the natural relations of the parties have been disturbed, or the position of the parties with regard to each other is really a novelty dating from settlement, and is on the face of it unnatural.

Attempts to evict have not I think been directly prevented by our Courts in great numbers, but in some districts no doubt one or two decisions adverse to the proprietors having become known have greatly discouraged them from making attempts of the kind, as an unsuccessful attempt would ruin their position in the village, and the law seemed uncertain.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

(I.) That the eviction be by decree of Court.

(II). That it be shown to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

5. A rule permitting the proprietor to evict on all these conditions would not in my opinion be hard on the ordinary twenty-years or two-generations tenant, but would give him as good a position as his strongest advocate could fairly claim for him.

But with regard to some tenants of the ex-proprietor class, I think that instead of compensation of the kind described in the Circular, they should be declared entitled to the full value of their interest in the land, calculated in the way prescribed in Financial Circular LIV of 1859, for compensation to tenants the lands in whose occupancy have been taken up for public purposes. By applying the rule of that Circular, where the tenant paid in buttai he would get two-fifths of the full value of the estate if evicted for no fault by the proprietor.

Some months before I first heard that His Honor the Lieutenant Governor considered that compensation to the tenant was the way out of the tenant-right difficulty, viz., in July 1866, I had after considerable inquiry arrived at the same conclusion with regard to Zillah Kangra, and had devised a plan for the summary settlement of tenant-right on such a basis, which was accepted by the leading zemindars to whom I on several occasions explained it. The Commissioner of Settlements however desired me to postpone action in expectation of orders to be speedily received by Government. In fact, the Commissioner did not see his way to sanction my plan, as it did not pretend to be based simply upon established customs of the country, which were supposed to be the basis of the orders with regard to tenant-right passed in other districts under settlement. Lately however being unable to wait any longer I have ordered the summary inquiry into tenant-right to be commenced, and have issued instructions to my subordinates on my own responsibility. I append a vernacular copy of those instructions, and a translation of paras. VI, VII, and VIII.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

6. With regard to condition No. I, I think it would be preferable to allow proprietors to evict all such tenants, except those recorded in settlement papers as "mauroosee" or "punnahee," without decree of Court after a year's notice in writing, leaving the tenant to sue for compensation in the interval between notice and eviction, or after eviction.

With regard to condition No. III, the words "in the proprietor's estate or holding" should I think be substituted for the word "in the village." With regard to condition IV, when a decree was necessary for eviction the

Courts might be left to fix the term in each case, otherwise one year's warning would I think be ample. With the above alterations I do not think that enforcement of the conditions would in an injurious degree be difficult or uncertain.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. Yes, but would allow such tenant also if at future time evicted to sue for compensation for improvements or plead a special agreement. The burden of proof to be on the tenant.

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. In those villages in which before annexation the proprietors held a strong position, in which the tenants had in fact been put in by the proprietors, and were dependent on them, the unfriendliness which often now exists is generally I think attributable: 1st, to our intolerance of the metayer system, or collection of rents by buttai. On the one hand we made tenants in such villages hereditary tenants, and on the other we encouraged them to sue for conversion of grain rents into cash, and then nearly always fixed for the whole term of settlement a very insufficient rate of "malikana." In this way the tenant who [by what was in my opinion the original implied agreement] was only entitled to hold in preference to other tenants at customary rates of buttai, acquired a position something like that of an English copy-holder, and enjoyed a large share of the profits which by the buttai system would have gone to the proprietor; 2ndly, to the fact that by our hard-fest institution of hereditary cultivatorship the old feeling of dependence on the proprietors was destroyed, and a hereditary tenant as long as he did not clearly fail to pay his rent could be as troublesome and obnoxious to the proprietors as he pleased. Our Courts are not sympathetic, and are unable to handle fine points of the kind, and decide how far a tenant may misbehave and be within the law or not. The power of eviction subject to payment of compensation will put this right I think; 3rdly, no doubt there was no hope of a good feeling between the parties when, as was often the case, a proprietor really required more land for his own cultivation, and found himself much worse off than his co-proprietors as by some chance the greater part of his land was in the occupation of hereditary cultivators, and must seemingly so remain for ever unless he could in some way catch them tripping.

Again, in those villages in which before settlement there was in practice little or no distinction but a vague one of name between all the cultivating occupants, but at settlement with reference to such vague distinctions we made one or more families proprie-

tors, and pacified the other occupants by calling them mauroosees, and making them pay their share of the bâch only, plus in some cases a small proprietary due. In such villagea the change at first was hardly perceptible, bus in course of time the greatness of the distinc-t tion is becoming apparent. The mauroosee now finds that he has sunk to a social level much below that of the malik, who would now refuse to intermarry with him, though very likely the mauroosee first settled in the village because of a marriage connection, or is on the maternal side descended from the present proprietary family. The mauroosee now hears also that sooner or later he will probably have to pay at the same rates as a tenant-at-will, or cash rent at a rate only limited by the amount of competition. The proprietors strive to depress such tenants as much as possible, and assume the position which the more powerful proprietors in other villages had and have with regard to their tenants, on the other hand the tenants resist as well as they can, and hence of course unfriendliness arises.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab.

Major T. W. Mercer, Deputy Commissioner, Sealkote—Careful enquiries into the subject, when Officiating Deputy Commissioner of Amritsur (see my remarks in Mr. Prinsep's pamphlet on landlord and tenant question).

2. So far as your observation and knowlege extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. I consider that the position of tenant was not then fully realized, owing to (the abundance of) waste land, and revenue was collected in kind. It was the object of the people to appear to subdivide their estates, to throw the liability ofthe share of revenue (buttai) over a larger number, than the real owner of the estate.

Very little was to be gained by evicting men admitted to a share in the cultivation, and a great deal was lost, and therefore they were not evicted. At that time (of the Sikhs) the tenants (so called) did perhaps look forward to the unmolested enjoyment of their estates, as far as the proprietor was concerned; but I doubt if any one felt secure in his occupation, in those times of official rapacity. Their status then bears no analogy to the status that has been created for them, by the change of circumtances, the increased value of land, the fixed assessment, the incontestable record of settlement.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. I believe that in these days, men who were invited to come in, and reclaim the waste land, came in with all the rights of proprietors, and I should certainly grant them all the

rights they can prove the existence of, for a numbers of years in full, and in perpetuity.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. The fact of British Government having recognized the status of the moroosee tenant at the first settlement, deterred the real landlord from exercising the right of eviction, and the Courts were led into error, in many cases, and confirmed the right of hereditary occupancy when there were no other grounds for it but a long continued possession of the land.

I cannot give instances, but I can remember that it was always my impression in every district, in which suits for eviction have been tried by me, that it was the Government policy to maintain the right of lengthened occupation; suits of this kind have increased much of late years, and especially as the time for revised settlement drew near.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

5. Regarding the conditions on which a proprietor should be permitted to evict, I would remark:—

(I.) That the eviction be by decree of Court.

(1) That it should be by decree of Court, except where the parties voluntarily agree to the written terms of the revised settlement, when they should be free to act as they like, without the expense of a suit.

(II.) That it be shown to the satisfaction of the Court that the land is *bona fide* needed for the proprietor himself.

(11) Yes, for the proprietor himself or his family.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(III) An excellent condition, but does it mean in same village, or on the same estate?

(IV.) That two or three years warning be previously given.

(IV) Decidedly; give plenty of warning.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

(V) Compensation certainly to be given and if the tenant's right be very strong, I would recommend that he should be allowed to keep a portion of the land, say 5 per cent, with full proprietary right. This to form part of the compensation given.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

6. I see no difficulty which could not be easily overcome.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers

7. Most advisable.—The effect of the opposite rule, would be to necessitate the eviction of a tenant-at-will, after a few

should not be allowed to alter his *status* by mere length of occupancy, advisable?

years occupation, to prevent his asserting the superior right, and thus deprive the proprietor of his tenants' dues.

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. I can give no illustration, but I know from frequent intercourse with the people in this and the Amritsur districts, that the operation of our system, recognizing the moroosee right, which was not known before, and was not understood, when it was created and recorded by our settlement officers, has given rise to a great amount of ill-feeling between landlord and tenants. The moroosee tenant had virtually become landlord of his holding, for in many cases he paid no malikana, and the landlord found him becoming insolent and independent, without the power of checking it. He felt that he was secure, and presumed on it. But while he could do all this, he could not improve the estate without landlord's consent, sink wells, &c.

The landlord was too jealous to give his consent, and the estate was never improved in consequence.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Captain Waterfield, Settlement Officer Goojrat.—2. As I understand it, not more so than any other tenants who had cultivated for *shorter* periods, and not in any way out of consideration for such length of occupancy. But they refrained as a rule from evicting any tenant. It would have been against their interest. No one denied their right to evict. Such tenants could not, I should say, confidently look for freedom from molestation.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as *a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holding?

3. Is the same observable in the case of cultivators who have reclaimed waste land?

3. These, if not located by the proprietor may have looked for permanent occupancy, provided the proprietor were influential and they kept upon good terms with him.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. No, no more than before annexation, but to the same extent up to Summary Settlement, and up to Regular Settlement, if there were no dispute or petition. If there were, the petitioner was referred to the Settlement Courts. At Regular Settlement the tenants were classified, sometimes only with reference to 12 years occupancy, and the *hereditary* (as he was called) became immoveable; so at least, the people considered, not knowing that we supposed ourselves to be recording a right as a fact existent, but thinking that we were laying

down another law (like that of limitation) which they had no power to challenge.

Of course no evictions took place. The Courts merely adhered to the Settlement Record.

In Goojrat the classification was careful and in accordance with the wishes of the proprietors, but so ignorant and fearful were these that in one pergunnah they allowed tenants located by themselves for two years previously, "kummeens" to be made *full* proprietors, not mere sub-proprietors, but with equal rights in village common. Of course they inveigh bitterly against the recording authority.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

5. In some districts the hereditary cultivators do not comprise these two classes alone, but some of *much greater* and others of *lesser* claims. Even with reference to period of occupation. A further enquiry may therefore be necessary to detect "*such tenants.*"

Some should have been made sub-proprietors beyond the possibility of eviction. Others again have no claim whatsoever to continuance. To the former eviction would be a hardship, whilst to the latter the conditions might be applied without any injustice.

Unexhausted improvements of a date anterior to annexation would have saved from eviction *then*, and should do so now.

(I.) That the eviction be by decree of Court.

(I) A decree of Court should not be a sine quâ non. It may be arranged for in the settlement record, to which effect can be given without litigation.

(II.) That it be shown to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(II) Uncertain, probably it would be worded "for himself or his family." The proprietor might prove it necessary for his support and yet show afterwards that he was obliged to cultivate it by servants, in reality other tenants-at-will

The necessity might have resulted from alienation of other land in time of pecuniary difficulties, and yet such a state of affairs might be easily simulated.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(III) Will prove simply prohibitive, as it would necessitate the proprietor first of all evicting his most profitable grain-paying tenants-at-will occupying inferior lands.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to com-

(V) Compensation will be a difficulty to the Courts and lead to uncertainty in practice.

pensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

6. Still the whole conditions *could* be worked by careful and intelligent Courts to the great and desirable improvement of the condition of such proprietors as are *bonâ fide* pressed for land, owing to the large area under hereditary occupation.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. Yes, certainly not allowable, as the period of occupancy was not the only ground for his being awarded the lower status; but the terms on which he entered and the manner in which he was located, were, or ought to have been, considered.

The higher status was in the same way awarded not merely for long occupancy, but for having borne losses, incurred heavy responsibilities, and because it was difficult to distinguish them from the actual proprietors.

No such claims can have possibly been acquired by any tenants-at-will since annexation.

To say nothing of the impolicy of a measure which will simply be designated a "*fraud*."

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. I have heard great sympathy expressed for tenants-at-will evicted, and the practice reprobated by large proprietors, showing a kindly feeling towards this class.

But the independence of the hereditary tenant is most galling to the proprietor. The latter cannot borrow his plough cattle, cannot call upon him to assist at harvest time. The hereditary tenant will not help in carrying out the multifarious orders of the District Officer. The yearly making and aligning of roads, the sowing and planting of trees, the filling up of holes (conservancy); all are left to the few kummeens (if tenants-at-will) and the proprietors themselves, who alone are fined for neglect of orders.

There are many other small duties and attentions which were obligatory upon tenants, and are now declined by the hereditary class.

All this affects the interior comfort and the mutuality of village communities.

The hereditary tenant asks no favors, the proprietor will grant none and lands are not improved by any expenditure of capital.

Now that rents are raised the proprietor has no wish to evict, but I believe that both tenant and proprietor would be made much happier, if the latter had the power, or rather the semblance of it under the proposed rule and conditions, which are protective in the extreme.

Litigation enforced is never forgiven.

No community of interests exists between the two classes, and both suffer in consequence.

Either this must be established or the hereditary tenant class should be absorbed and not perpetuated.

It *can* only be established if the hereditary tenant is looked upon as the more profitable of the two by the proprietor.

He already cultivates better lands than the tenant-at-will; let him improve, but not alienate. The proprietor will always look for the reversion, let him pay full rents, less cost of improvements, and enjoy merely the prior right of occupancy at an equitable rent, to be raised only at intervals of 5 or 10 years, according to the value of money and produce, the cultivator sharing the increased profits with the proprietor.

And allow eviction under the proposed conditions, which will then fully satisfy the proprietor, who has acquired a slight but sufficient hold upon his dependant.

The hereditary tenant cannot be left as he is.

It would be better to absorb him in one of the many ways proposed, the best being the partition of the land between the two interested parties, proportionately to the profits enjoyed by each. The infinitessimal sub-division of land being provided for by the Legislature.

More than 10 per cent of the cultivated area in Goojrat is in holdings of less than 5 acres, giving an average area per holding of 2-17 acres.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

R. P. Nisbett, Esquire, Settlement Officer Goojranwalla.—My attention has been drawn to the subject forsome time past from the prominence given to it in several printed papers received for information and guidance from the Settlement Commissioner, and more particularly from the extra judicial enquiry now going forward under

the orders of that officer into the status of over 6000 individuals in this district recorded as hereditary cultivators at last settlement.

The result of this enquiry as far as it has proceeded at present is as follows :—

Abstract of enquiry into the rights of hereditary cultivators, Goojranwalla district:—

Name of Tehseel.	Tenants recorded as hereditary at last settlement.	No. whose status has after enquiry been maintained.	No. who have acquired proprietary right.	No. declared to have lost the status of hereditary cultivator, who can only hold hereafter as inferior tenants with or without a protective lease for a term of years.
Goojranwalla,	1,955	271	1	1,683
Wazeerabad, ...	1,897	154	8	1,635
Hafizabad, ...	650	30	...	620

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Previous to annexation the rights in landed property were so ill defined, or the Kardar or Ruler of the day exercised such almost arbitrary power, that the relations between landlord and tenant were little understood, and still less recognized ; though where permitted by the Kardar, or the landlord felt strong enough to demand it, some due or quit rent was paid by the cultivators to the so called proprietors ; the proprietor as a rule exercised no authority to locate a cultivator, neither could he evict one, who paid revenue direct to the Government Officer who collected, unless the Kardar or Ruler was induced by some illicit consideration to commit an act of oppression, and then only when the proprietor would himself undertake to pay the Government revenue on the land. The extent of his cultivation was the real standard of every man's value, as it became, after a few years tenancy, the general measure of proprietary right.

In this district it is well known that both Dewan Sawun Mull and General Avitabile two of the cleverest Kardars who ruled the country, extended great protection to cultivators, encouraging them to remain on their holdings, and in numerous instances guaranteed proprietary right or undisturbed occupation.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. General Avitabile granted proprietary right to large bodies of cultivators in the Bela lands of Tehseel Wuzeerabad, where much land was reclaimed and brought under culti-

vation by men who originally could have had no proprietary right in that part of the country, the presence there of such a mixed body of Juts, Bairopias and others is evidence of this when Chutballs and Tarars are the indigenous races.

Again, in Tehseel Hafizabad, Dewan Sawun Mull located cultivators in waste tracts, giving them as much as half the Government revenue as enam, to give them confidence in the permanency of their occupation and induce them to reclaim more land.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise :—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. Suits for eviction of tenants who claimed permanent rights of occupancy have not been frequent in this district; the fact is there is a scarcity of cultivators here, and the payment of malikana is rather the exception than the rule; proprietors and tenants adjusted their respective positions among themselves, and have lived on the best of terms, disputes have not arisen and cases of eviction were rare.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation or not?

(I.) That the eviction be by decree of Court.

(II.) That it be shewn to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

5. I am strongly of opinion that eviction by decree of Court after regular suit is the only just procedure. It would not be difficult to lay down rules to meet almost every case under which a cultivator is entitled to a permanent right of occupancy, and if in a suit before it the Court found the cultivator could claim none of the benefits of those rules he should be at once evicted after being re-imbursed for substantial improvements made in his holding; and here I think, and I know it to be generally felt among the tenant class, that the question of compensation is not sufficiently considered in our Courts; the compensation should be a sum in hard cash, paid before the Court, and the tenant should get credit for every improvement however slight without any regard to its having been made with the express consent of the proprietor as long as from his presence near the spot it might fairly be concluded he was not in ignorance of what his tenant was doing. I am quite sure the remuneration allowed to the tenant on eviction is often insufficient for what has been done, and I consider the grant of extra compensation, under certain circumstances, to enable the tenant to establish himself elsewhere would be both just and salutary. I consider the merely granting a tenant a protective lease, as is now done, for a longer or shorter period according to the value of improvements made and then turning him out, without any *cash* payment for improvements, to be unjust. It is not fair to reckon on as a set-off against *bonâ fide* improvements

the value which the extended lease might or might not be to a tenant in view of chances and circumstances too numerous to detail; if the proprietor really requires the land he would as a rule much rather pay a money compensation and get the land at once, and if he does not want the land, why under a system of protective leases any proprietor who desires to harass a tenant can bring him into Court, and then bark a full enquiry by compromise, agreeing to a protective lease for a few years, at the same time telling the tenant he does not really wish to turn him out at the expiration of it, while the tenant for a little present respite closes with the offer, only on leaving the Court to find himself debarred from further remedy and his landlord armed with a fearful engine of oppression which he can use at will. The protective lease only defers the evil day for the tenant, and ultimately strands him hopelessly on the world without a pice to shew, for perhaps a life time of labour and told on another man's property.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. I consider such a rule would in effect be nugatory. It is not reasonable to suppose that if promulgated a proprietor would allow an inferior tenant to remain long enough on one holding to acquire a superior status. In the case of a relative or servant length of occupancy might enable a man under such a rule to secure permanent rights of occupancy, but even this would be rarely the case.

8. State how the operation of our system thus far has effected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. This question is not a very easy one to answer; as a rule, one has not the same opportunity of conversing with tenants and ascertaining their sentiments as one has with proprietors. There is an idea abroad that the fiat of Government has gone forth to break up the class hitherto known as "mourousee" cultivators, and it is generally felt in this district that the present settlement will prove even more disastrous to the tenant class than the last settlement was to the proprietary body, when large numbers of proprietors abandoned their lands on account of the jummas, which were subsequently twice reduced. Still, as the orders of Government were not carried out in their integrity by the native officers of settlement, hundreds of proprietors failed to recover their lands, which were forcibly transferred to persons supposed to be better able and willing to pay the Government demand than the original owners. However just and right the present change in the status of cultivators may be, I would with great respect to higher authority say I think it is a fair question whether, as there is no general complaint among any class of persons, and this revision of the tenant status is purely gratuitous on the part of Govern-

ment, it would not be a sounder measure of State policy to avoid these sudden and violent transitions, for it cannot be doubted that they beget distrust and anxiety in the somewhat simple mind of the agricultural community, and create amongst all classes a want of confidence in good faith of Government and in the stability of our rule and institutions. The Revenue Courts of the country are open to every man who has a grievance; let him be referred there for redress, and if errors have crept into our former Revenue system let us rather in avoiding them for the future exercise an innocent (*sic*) reserve as to the past, and not in administering gratuitously a wholesale specific for previous wrong-doing to the minority, not only fail to earn their gratitude and good will, but at the same time excite the hatred and discontent of the majority of the population; for it must be borne in mind that the number of proprietors who in this tenant enquiry benefit at the expense of the cultivators are not 20 per cent, the one of the other.

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Bishen Sing, Tahseeldar.

Prior to annexation the classification of tenants into hereditary and non-hereditary cultivators was not known. "Proprietor" and "cultivator" were the only terms applied to the agricultural class. The terms "Kirsan," "Wahik" and "Assamee" were also made use of, but these are all synonymous to the term "cultivator," and therefore make no difference.

A very slight distinction was observed between the proprietor and cultivator under the Sikh rule. Profit was the only object in view in those days, and it mattered little to the ruling power through whom that profit was gained. If a cultivator were in better circumstances than the proprietor, preference was given to and arrangements made with him for the payment of the revenue demand. He was thus considered the Chief of his village, and received some slight consideration in regard to the amount payable by himself. All the others, whether proprietor or cultivator, paid at equal rates. The fact is that the Kardars reserved all power in their own hands, except in villages where the hereditary proprietor happened to be a man of influence and respectability. In such villages the proprietor enjoyed his own privileges, and consequently the usual distinction was maintained between cultivators and the proprietary body.

The power to oust a tenant, or to assign waste lands for purposes of cultivation, was

held by the Kardar or Puttadar, in villages where the real proprietors were in poor circumstances and had no influence with the village community. Thus, in the following elaquas of this district it will be observed that, through the influence of Kardars, the real proprietors have been set aside, and the proprietary rights held by strangers, viz:—

In Elaqua Sohan.

In Elaqua Usghum and also other Elaquas within the jurisdiction of Tehseel Goojur Khan. In fact, men of influence amongst the proprietary body of this district were very few, the only exceptions being Sirdar Futteh Khan of Kote; Futteh Khan Drek; the members of the Koonda family; the members of the Kumallial family, and the Mulliks of Pindee Gheb;—who were and still are the only men of note and respectability, and consequently, the only men who exercise power over the agricultural community of their respective villages.

In villages where there were a number of proprietors and the "Pottah" was taken by only one of that body, he dealt with the other hereditary co-proprietors on the same terms as with the cultivators. This practice was also observed in cases where the "Pottah" was taken by a stranger, thereby clearly showing that the proprietary privileges were not held as a hereditary right but in virtue of "Pottahs" given under the Sikh rule. Hence, at the time of regular settlement, cultivators were in many instances recorded as proprietors of their respective possessions, while the real proprietor had only a small Talooqdaree allowance assigned to him in token of his proprietorship. These are occurrences which have taken place more particularly in the villages of Banniah, Ropur, Chuk Belee of the Rawulpindee district. In like manner, Khuttrees, Brahmins, Joolâhas, and other low castes (Kummees) have been recorded proprietors in the villages of Tehseels Kahoota and Goojur Khan. These are in themselves self-evident facts, that had the proprietary body held paramount power under the Sikh Government, their rights would not have now been trampled upon at the regular settlement under British rule.

From 1855 to end of 1866 I held the post of Serishtadar in the Rawulpindee Settlement Department, and thereby had opportunities of obsreving and enquiring into the relations between proprietors and cultivators in the Punjab, the result of which is given above in detail.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. This question has already been replied to in the preceding one. Under the Sikh rule, the power to evict a tenant was not held by the proprietary body at large. In villages where the proprietor was a man of influence, he certainly held the power to evict a tenant without reference to period of occupancy, as in the case of Sirdar Futteh Khan of Kote in this district. But there can be no doubt that the exercise of such power was, to say the least, an act of injustice, particularly as no hope of redress was held out to the sufferer by the ruling power.

Pottahdars (whether a stranger or the proprietor himself) Kardars, and Jageerdars also had the power to evict a tenant. But, owing to the difficulty in procuring other cultivators, this power was seldom made use of, except in cases where a small patch was required as a building site or for sinking a well &c. On the other hand, the opportunity to evict a tenant was seldom afforded, because the oppression practised in those days generally compelled both tenants and proprietors to abandon their villages and seek employment elsewhere. Tenants who had cultivated for any length of time were however led to hope that they would not be unnecessarily deprived of their respective holdings.

Lands held by tenants of villages other than those detailed above were never at the disposal of the proprietary body unless under the following circumstances:—

(I.) On occasions of tenants abandoning their holdings in consequence of drought or other calamities.

(II.) Tenant forsaking agricultural pursuits for other employment.

(III.) Tenants absconding on account of oppression.

(IV.) Tenants quitting their native soil in consequence of insufficiency of land and inability to obtain a larger area.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Cultivators who had reclaimed waste lands were certainly under the impression that they would not be molested, at any future period, under the Sikh rule. They were led to entertain this hope in consequence of their having had to lay out a large capital for reclaiming and improving the lands held under cultivation. Had they the slightest notion of being eventually deprived of their holdings, it is not likely they would have spent their money so freely. For it is a well known fact that

to reclaim lands in the vicinity of the hills in elaquas Kahroo, Nurrur, Nurraee &c., an expenditure has to be incurred equal to, if not larger than, that required to purchase the same quantity of ready prepared or table land in any other part of the country.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise:—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. At the commencement of British rule a rumour was spread that hereditary cultivators were never to be evicted from their holdings. In consequence of this rumour gaining ground, few tenants of that class have been ousted since annexation. Nor indeed have many evictions taken place amongst the non-hereditary cultivators either, owing to the fact that the extent of uncultivated area in this district is much greater than can be attended to by the agricultural class. Only in two villages (Thumma and Sarian) have the proprietors complained of their cultivators having more land than they themselves had, and that as a consequence thereof they (the proprietors) were unable to support themselves and their families. In each of these cases the settlement officer had a portion of the hereditary cultivator's lands taken away and make over to the complaining proprietors. With these two exceptions the Courts have always evinced a desire to prevent the ejectment of tenants, both hereditary and non-hereditary.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

(I.) That the eviction be by decree of Court.

(II.) That it be shwon to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

5. I consider it would be an act of gross injustice to permit the proprietors to evict a resident cultivator, because cultivators of that class are of various kinds, viz.

1st. Those who were originally hereditary proprietors but owing to their inability to take the Pottah under the Sikh rule it was given to strangers, who by virtue of long possession became the proprietors at the time of regular settlement under British rule, while the real hereditary proprietor, from causes over which he had no control, was recorded simply as a hereditary cultivator.

2nd. Where there were a number of proprietors but the Pottah was taken by only one, hence the others though also hereditary co-proprietors, were treated at the regular settlement as hereditary cultivators, while one of the body, by virtue of the "Pottah," became sole proprietor of the village.

3rd. Where the Jageerdar, in consequence of his having realized his dues in grain for a number of years, at the same rate from hereditary proprietors as from cultivators, was at the regular settlement admitted as proprietor of the village, while he who was entitled to that

position as a hereditary right was recorded as a hereditary cultivator.

4th. Hereditary cultivators who have reclaimed waste lands, established dhokes, sunk wells, and paid the revenue under the Sikh rule at the same rate as the proprietor, similar to the cultivators by whom Maharaja Goolab Singh had an extensive area reclaimed in elaqa Kahroo, by digging and removing the rooks and stones with which it was covered, and who subsequently had to pay a very heavy assessment, which ultimately compelled the proprietor even to forsake the land of his birth.

5th. Resident cultivators who in consideration of the expense incurred by them in improving their lands, had the power to sell or mortgage any portion of their holdings under the Sikh rule.

Under no excuse would it be just or advisable to oust a tenant of any of the above detailed classes, particularly as those described under headings 3 and 4 were exempt from eviction even under the Sikh rule.

But if the land held by a tenant be equal to a higher rate of rent than that already paid by him, and he object to accept the said higher rate, he might without fear of injustice be evicted at once, provided it be admitted by arbitrators that the higher rate is just and equitable, and provided also that there be another party ready and willing to take up the cultivation at the enhanced rent.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

6. The enforcement of all or any of the conditions proposed in the above question would, I consider, be attended with great hardship and dissatisfaction, though when a rule is once enforced, be it ever so severe, the people will of course gradually become used to it.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. A cultivator once recorded as a tenant-at-will in the settlement papers should not, I consider, be allowed to alter his status under any circumstances.

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. Under the operation of our system, both proprietors and cultivators are satisfied, and in general a friendly feeling exists between the two. Excepting in villages where any litigation had taken place between cultivators and proprietors at time of regular settlement. Thus in the villages of Shumshabad, Chakur, Jundnuggar, Thuttee Kulra, Khurruppa &c., considerable enmity is known to exist between the

two classes, for the reasons indicated above.

A feeling of dissatisfaction is also observable in villages where the hereditary cultivator has a larger extent of land under cultivation than the proprietor, though the latter has a much larger family, and in consequence of his income being limited is unable to support them.

If the rule permitting the proprietor to evict a tenant be ever enforced the dissatisfaction and irritation of feeling attendant thereon will I fear continue for years, and in many instances lead to the shedding of blood, together with the commission of various other crimes.

Ram Sahai, Tuhseeldar of Khoshab.

1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

1. I have been employed in Revenue and Settlement work in the Shahpore district, since the year 1849, during which I have held the following posts: Peshkar, Sudder Moonserim, Naib Tahseeldar, and Tahseeldar. Thus for the last seventeen years I have had almost daily opportunities of observing and enquiring into the relations past and present existing between proprietors and tenants in that portion of the Punjab now included in the limits of the Shahpore district.

2. So far as your observation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, as a *matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. In this part of the Punjab during the Sikh times there were three kinds of tenants. 1st. Cultivators who had been allowed by the proprietors to sink a well in the land in their occupation. 2nd. Tenants who with the proprietor's permission had cleared lands along the banks of the river (called "Bela" lands), incurring considerable expenditure in the operation. These men were called "Boota-mar," and often received a "Putta"* by which the proprietors bound themselves not to disturb these tenants for various periods, varying from six to ten years, during which the tenants held on easy terms, being allowed a remission on the ordinary rates of "buttai" (these remissions varied from a sixth to a sixteenth of the produce, and were known by words which expressed the proportion of the whole produce remitted, viz., "Chheôg," "Athôg" "Sulôg," &c. 3rd. Ordinary tenants-at-will. The first kind of tenants were by the custom of the country led to look forward with perfect confidence to the undisturbed enjoyment of their holdings, and as a fact were *never* ejected therefrom.

* These Puttas were often given by the Kardars without consulting the proprietors. I have come across hundreds of such. W. G. D.

The only acknowledgment the proprietor received of his rights was the perquisite known as "yukk rupool," which consisted ordinarily of a topa in the maund on the whole produce, and this used to go to the family "meerasee" and "oolima" of the proprietor. It may be added that this allowance was taken from every kind of tenant, except the tenant-at-will from whom the proprietor took his dues at the *full* rate, viz.: *half the produce.*

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. The reply to this is for the most part contained in the answer to the second question. It may be added that, after the period for which special privileges had been secured to the reclaimer of waste land ("Boota mâr") had elapsed, the further retention of the land by him depended much on the demand for labor at the time; where land was plentiful and labor comparatively scarce, the original occupant was allowed to remain on, and vice versa—but it may be stated as a general rule that in this part of the Punjab *he was not disturbed in his occupancy.*

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. Of the first class of tenants described above (those who had sunk wells) none have been ejected from their holdings since annexation; on the contrary, owing to lapse of time, the small value of land in former days and the consequent carelessness of proprietors, many of this class of tenants have become proprietors of their holdings. Of the second class too, it may be stated pretty confidently that very few have lost their original positions, and that whenever the question of their standing came to be decided by the Courts they invariably obtained the status of cultivators with rights of permanent occupancy.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him in a worse position than he held before annexation, or not?

(I.) That the eviction be by decree of Corut.

(II.) That it be shown to the satisfaction of the Court that the land is *bonâ fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to evicted exists in village.

(IV.) That two or three years warning be previously given.

5. In replying to this question I would first explain that, as a rule, in Bhayachara estates, hereditary cultivators are not known, except in villages along the river, in which will be found a few of the class described above as "Boota mârs." In Zemindaree properties there are cultivators of both kinds, viz.: with and without occupancy rights. In such estates the proprietors as a rule do not cultivate at all themselves, or if they cultivate they do so very sparingly. It follows therefore that where the mass of these tenants are found, it could rarely happen if the second and third of the proposed conditions* were observed, that a cultivator with rights of occupancy would be ousted from his holding. Especially as the greater proportion of

* The conditions described in the Government questions are here referred to. W. G. D.

(V.) That such compensation to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

the tenants, even in estates held on this tenure, would be mere tenants-at-will, and therefore before he could reach the hereditary occupants, the proprietor would have to eject all these. Of course if the 4th and 5th of the proposed rules were acted on without regard to the two preceding conditions, proprietors would benefit largely; but in that case, the position of the tenant with rights of occupancy would undoubtedly be very inferior to that held by him before annexation, because in former times a man had many irregular ways of supporting himself which he could not have recourse to now. Under our rule the agriculturist has nothing to look to for support but the land itself, and owing to the increase of population, with reference to the land available for cultivation and means of irrigation, there is not, in *this district at at least*, that demand for labor that would ensure his obtaining employment as a cultivator elsewhere, and other occupation for him there is none—money compensation to such men would therefore be a doubtful enquivalent for the position of which they had been deprived. What proprietors really want is not to eject these tenants with occupancy rights, but to be allowed to take their rule from them in kind, according to the system which prevailed under the Sikhs. There is this to be said against the "buttai" system that it leads to a great deal of petty squabbling between the proprietor and tenant, but this would soon die out when tenants became satisfied that the Courts would not lend their support to factious opposition on their part with a view to force proprietors into accepting cash rents, and in process of time these tenants would become reconciled to the altered position and more equal division of profits which the "buttai" system involves. Under the system which now generally prevails of such tenants paying the quota of revenue assessed on the land in their occupancy with the addition of a percentage varying from 5 to 25 per cent on the Government demand, the profits of cultivation nearly all go to the cultivator, owing to the necessity (under our system of cash payments fixed for long periods) of making low assessments. I would recommend therefore a reversion to grain rents, but in fixing such, regard should be had to the fact that cultivators with rights of occupancy have always practically enjoyed a share in the profits of cultivation; these should therefore still be reserved to them, by permitting them to hold the land in their occupancy at a more favorable rate than those at which ordinary tenants hold similar land. A system like this would

please both parties and cause less suffering than any other that could be devised. It may be added that during the Sikh time the general rule was for the Kardar to collect the dues of the State by "kunkoot." But where the proprietor was possessed of sufficient influence he would be allowed to pay the appraised value of the crop on the whole of his proprietary land and collect his own dues by "butttai" from the actual cultivators. In those days however neither party as a rule derived much benefit from the land, as the lion's share of the profits of cultivation was absorbed by the State.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

6. The answer to this question is partly contained in the reply to the foregoing question, and all that need be added here is that the introduction of the *proposed rules* would lead to enormous increase of litigation, the expenditure of large sums of money, and would certainly for a long time embitter greatly the relations existing between the two sections of the agricultural population, which it is the policy of the State rather to place on a more amicable footing. Great individual suffering would also undoubtedly result from carrying out the proposed changes, for our Courts are more or less hasty and uncertain in their action, and these are very delicate questions for them to deal with.

7. Do you consider that a rule to be effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. There is no doubt in my mind that mere length of occupancy should not be allowed to constitute ground for alteration in regard to tenants. If it did, proprietors would be always changing their tenants to avoid the possibility of the latter acquiring rights of permanent occupancy, and tenants also would rarely be got to do justice to the land; both parties (to say nothing of the State) would thus be sufferers. This is a matter which should be allowed to settle itself on consideration of mutual benefit of the two parties concerned.

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. The effect of the operation of our system has been that cultivators with rights of occupancy have become wealthy at the expense of proprietors, except where by mutual consent buttai prevails, in which case each has profited in the same proportion, and both are well to do. In the latter case the two parties do not view each other in the light of deadly enemies as where money rents have been authoritatively introduced and where proprietors are forced to look tamely on while their tenants are monopolizing nearly all the profits of their (the proprietors') land. Among other instances, the case of Shama Goria of Shahpore itself, as well as those of many others

in the villages of Chuckramdass, Suddakumbo, and the two Khais might be quoted as instances of men who under the Sikh Government were on the best of terms with their landlords, but whose relations are now of the very worst; nor under the former regimé were they in the flourishing circumstances in which they now are. In many of these cases the proprietors have carried their appeals beyond the Financial Commissioner. In one case a proprietor near Mianee, after years of litigation, succeeded last year in getting his rent raised to an amount equal to the revenue assessed on the well, still he is not satisfied, while the cultivator prefers paying this rather than giving "buttai."

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1. What opportunities have you had for observing or enquiring into the relations between proprietors and tenants in the Punjab?

Rae Bunsee Lal, Extra Assistant Commissiner Delhi.—Few people have had the opportunities Rae Bunsee Lal has had for observation and enquiry on these points. He has been in the Government service, employed in Revenue and Settlement work, from the earliest days of our rule in the Punjab; and has been frequently posted to lately annexed districts. I am sorry that his absence in camp prevents my talking the matter over with him and getting fuller replies from him before sending these papers to the Commissioner.

2. So far as your obsevation and knowledge extend, have you found it to be the fact that proprietors (before annexation) refrained, as a rule, from evicting tenants who had cultivated for long periods, say 20 years or two generations? And were such tenants, *as a matter of fact*, led to look forward with confidence to the unmolested enjoyment of their holdings?

2. Observes that prior to annexation there was no guarantee for the permanent occupancy of a tenant, except the good understanding between him and the proprietor. Land was of little value and cultivators in demand. Sometimes proprietors in their anxiety to keep up the cultivation went so far as to confer proprietary rights on cultivators. There was a perfectly good understanding between the two classes. Some cultivators had the support of the ruling power, and the proprietors could not have turned them out.

3. Is the same observable in the case of cultivators who have reclaimed waste lands?

3. Cultivators who reclaimed waste lands had higher rights. They would often be on the footing of proprietors—at all events of inferior proprietors.

4. Since annexation have tenants of either or both classes been evicted to any considerable extent within your observation—either through the intervention of our Courts or otherwise;—on the other hand, have attempts to evict such tenants been largely prevented by our Courts?

4. No distinct answer to this question.

5. Do you consider that a rule permitting the proprietor to evict such tenants on any or all of the following conditions would be a hardship to the tenant and place him

5. Does not think the rule proposed would be a hardship. Approves of the suggestion. Thinks that the rule proposed would go far to remove the causes of the

in a worse position than he held before annexation, or not?

dissensions which at present prevail between proprietors and cultivators, and interfere so much with cultivation. But this rule should not apply to cases when the proprietor was not in actual possession of the village, but merely in the position of a Talooqdar with an old established community of cultivators in possession, who perhaps had been the first to cultivate the land.

(I) That the eviction be by decree of Court.

(II.) That it be shown to the satisfaction of the Court that the land is *boná fide* needed for the proprietor himself.

(III.) That no tenant of less prescriptive right than the one proposed to be evicted exists in the village.

(IV.) That two or three years warning be previously given.

(V.) That such compensation, to be awarded by arbitrators, be paid by the proprietor to the tenant (in addition to compensation for unexhausted improvements) as will enable the tenant to establish himself elsewhere or find for himself other profitable occupation.

6. Do you consider that the enforcement of all or any of the above conditions would be in practice difficult or uncertain?

6. Thinks condition No. 2 objectionable, as it unduly restricts the proprietor. Proprietors would eject tenants to get the land, and then not half cultivate it when they got it. Thinks No. 4 too objectionable as being too hard on the proprietors. The tenant, after he had got notice, would during the period allowed him, destroy the land and resist payment of rent. As regards the 5th condition thinks that compensation should be given only for wells, buildings and large trees. But observes that cultivators who possess wells &c., are not ejected.

7. Do you consider that a rule to the effect, that a cultivator once recorded as a tenant-at-will in the settlement papers should not be allowed to alter his *status* by mere length of occupancy, advisable?

7. Thinks he should not be allowed to alter his status. If he were, proprietors would have to change the tenants continually to prevent their acquiring a right of occupancy, and much litigation would be the result.

8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them, giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable?

8. Dwells much on the effect of our system in destroying the subjection of tenant to proprietor and so leading to endless disputes and difficulties.

FROM

T. H. THORNTON, ESQUIRE,

Secretary to Government, Punjab.

To

THE HONORABLE E. L. BRANDRETH.

No. 649. *Lahore, dated 8th November* 1867.

SIR,

Revenue Department.

By desire of the Hon'ble the Lieutenant Governor, I transmit herewith a printed copy of the draught bill for "amending and declaring the law relating to certain matters connected with the tenure of land in the Punjab," prepared by the Committee at Murree of which you were a member, and am directed to intimate that, assuming the power of conditional ejectment of hereditary tenants to be withheld from landowners, His Honor approves generally of the provisions of the draught bill; but His Honor reserves to himself the right of expressing his views upon the subject more fully hereafter. A few minor alterations and additions proposed by His Honor are entered in red ink on the margin.

2. His Honor now desires that, as recommended in your letter No. 2203 of the 24th September, certain points in the draught bill be submitted for the consideration of a Committee composed of the following officers :—

Mr. Forsyth,
Mr. Prinsep,
Mr. Aitchison,
Lt. Col. Young,
Mr. Lyall,
Mr. Blyth,

Extra Assistant Commisioners,

Jaishí Rám,
Muhammad Hyat Khán,
Agha Kulubábid,
Muhammad Sultán,

with yourself as President.

3. Accordingly, printed copies of a precis of the replies received to this Office Circular No. 2—328 of the 29th May 1867 will be supplied to the several members of the Committee, who will be directed to assemble at Lahore, on the 15th instant, with a view of meeting in Committee on the 18th instant. They will thus have one clear day at Lahore, before the meeting, to consider the papers and the subjects for discussion.

4. I annex a copy of the questions to be laid before the Committee, and rules for regulating the proceedings.

I have, &c.,

Secretary to Government, Punjab.

Questions to be considered by the Committee:—

1. Whether the Committee, having regard to the evidence before them and their own experience, consider that a rule permitting a landowner to evict tenants of long standing or those who have reclaimed waste land, under the conditions set forth in question 5 of Government Circular No. 2 dated 29th May 1867, would be unjust to the tenant and place him in a worse position than he held before annexation, or not.

II. Whether, assuming the right of ejectment of hereditary tenants under the conditions above specified to be disallowed, the period proposed in questions 4 and 6 of the draught bill as a test of occupancy rights appears appropriate.

III. Whether the principle laid down in Section 7 of the bill, *viz.*, that tenants recorded as tenants-at-will shall not acquire the status of occupancy tenants by mere lapse of time, is approved.

IV. Whether it would not be desirable to declare, as an amendment to Section 8, that landowners should have the power of raising the rents of hereditary tenants at intervals of five years, under the circumstances set forth in Section 9, on giving due notice, *without* filing a suit; leaving it to the tenant to contest, if he thinks fit, by suit in court, the equitability of the rate imposed.

V. Whether it will not be desirable to declare expressly that the tenure of hereditary tenants of land shall descend to the direct lineal heir or heirs only of the incumbent, and provided such heir or heirs shall have been directly or indirectly dependent on the said land for support.

Rules.

Any member of the Committee will be entitled to move amendments of the draught bill, provided he give notice in writing to the President of the amendment he intends to propose on or before the morning of the 18th, or receive the special permission of the President to move such amendment.

The decision of the Committee will be that of the majority; but the minority may record reasons for dissent.

T. H. Thornton,
Secy. to Govt. Punjab.

A Bill to amend and declare the law relating to certain matters connected with the tenure of land in the Punjab.

Preliminary.

1. "Landowner" means any person, not being the Government or assignee of the Government Revenue, entitled to receive rent.

2. "Tenant" means any person not being a sub-proprietor, who is, liable to pay rent, or his representative.

3. "Rent" means whatever is payable on account of the use or occupation of land, subject to the assessment of land revenue.

Of certain rights and liabilities of landowners and tenants

Right of Occupancy.

4. Tenants who, within 12 years prior to the 1st November 1849, * possessed proprietary rights in the lands now occupied by them, and have lost those rights, otherwise than by operation of the law of treason, shall, the absence of special agreement to the contrary, have a right of occupancy in such lands, so long as they pay the rent payable for the same according to the provisions of this act.

5. Tenants recorded as having a right of occupancy in lands held by them at a regular Settlement duly sanctioned by Government, prior to the passing of this Act, shall be deemed to have rights of occupancy in such lands, unless—

First—The tenant admit in writing, before the District Officer or other Officer specially empowered by Government to receive such admissions, that he record is erroneous, or—

Secondly.—The landowner establish by suit in the Civil Court, within six years from the date of the passing of this Act, that—

* The Lieutenant Governor suggests that in the case of the Punjab proper the 1st April 1849 be assumed as the date of annexation; in the case of the Trans-Sutlej-States 1st April 1847. In the case of the Cis-Sutlej and Delhi territories special dates might perhaps be fixed with reference to the dates of our acquisition of those territories.

(1.) The entry in the Settlement record was contrary to the principles adopted at the Settlement, as set forth in the official report or records of the Settlement; or that—

(2.) Within 12 years prior to the 1st November 1849, tenants similarly circumstanced in the same village (other than tenants specified in Section 4,) have been ejected from their holdings; or that—

(3.) Rights of occupancy in the common lands of a village have been recorded in favor of a co-proprietor of those lands.

6. In the case of lands of which there has been no Regular Settlement sanctioned by the Government, any tenant who within 12 years prior to 1st April 1849 * has been in continuous possession of the land occupied by him shall possess a right of occupancy in such land, provided that—

* November in original vide note to para: 4.

(1.) Such land be not village common land of which he is a co-proprietor, or—

(2.) It be not established that within 12 years prior to the 1st November 1849 tenants similarly circumstanced in the same village (other than tenants specified in Section 4,) have been ejected from their holdings.

Rule.—If during the above term the tenant shall have voluntarily exchanged such land or any portion of such land belonging to the same landowner such varied occupancy shall, for the purposes of this Act, be held to be continuous occupancy.

7. No tenant recorded in the Regular Settlement papers, in accordance with the principles adopted at that Settlement, as a tenant at will, shall acquire rights of occupancy by lapse of time.

OF THE ENHANCEMENT OF RENT.

8. No tenant having a right of occupancy shall be liable to enhancement

Vide question IV.

of rent, except by the decree of a Revenue Court.

9 In making such award the following conditions will be observed ;—

(1.) In no case shall the rent payable by a tenant having a right of occupancy be more than ninety *per centum* of the highest rent of which the land is estimated as capable of yielding.

(2.) In the case of tenants who have paid no rent besides the Government Revenue for a period of 12 years before the first regular Settlement, the rent payable shall not exceed seventy-five *per centum* of such rent.

Note.—These rates are based on the supposition that all extra cesses, such as Road Fund, Patwarís fees and the like are paid by the landowner.

10. After a decision shall have been passed in accordance with Sections 8 and 9, no suit shall lie for re-enhancement of the rent until the expiration of five years from the date of such decision, unless—

(1.) Meanwhile a general revision of Settlement shall take place ; or—

(2.) The quantity of land held by the tenant shall be ascertained to be greater than the quantity for which rent has previously been paid.

11. In the case of tenants not having a right of occupancy, the rent payable by any such tenant for any land in his occupation shall be such amount as may be agreed on between him and the landowner ; or, if no such agreement has been made, such amount as was payable for the land in the last preceding year.

12. If in any suit between a landowner and a tenant not having a right of occupancy the amount of rent payable by such tenant shall be disputed, he shall not be held liable to pay rent higher than that payable by him for the last preceding year, unless

the Court shall be satisfied by evidence in writing that the parties have agreed that the rent so payable shall be increased.

Abatement of Rent.

13. Every tenant having a right of occupancy shall be entitled to claim abatement of the rent previously paid by him—

(1.) If the area of the land has been diminished by diluvion or otherwise ; or—

(2.) If the produce or the productive powers of the land have been decreased by any cause beyond the power of the tenant, or if the quantity of land held by the tenant prove by measurement to be less than the quantity for which rent has been previously paid by him.

Commutation of Rent.

14. No commutation of rent in kind into rent in money shall take place without the consent of the landowner; or of rent in money into rent in kind without the consent of both landowner and tenant.

Remission of Rent.

15. It shall be lawful for the Court, in making a decree for an arrear of rent, to allow such remission for the rent payable by any tenant as may appear equitable if the area of the land in the occupation of such tenant be diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought or hail or other calamity beyond the control of the tenant, to such an extent that the full amount of rent payable by such tenant cannot, in the opinion of the Court, be equitably decreed.

Ejectment.

16. No tenant shall be ejected from the land occupied by him except between the first day of May and the 15th day of June, or such other dates as may have been fixed in the village

administration paper. Provided that if while his rent is in arrear he has failed to cultivate the land for which rent is due, he may be ejected at any time.

17. No tenant-at-will from whom no arrear of rent is due shall be liable to be ejected from the land in his occupancy unless notice shall have been given him through the Revenue Court on or before the first day of June or such date as may have been fixed in the village administration paper.

18. Any tenant from whom an arrear of rent is due, may, subject to the provisions of Sections 17 and19 be ejected from the land in respect of which the arrear is due.

19. No tenant having a right of occupancy shall be ejected otherwise than in execution of a decree for ejectment, and such decree shall not be made unless at the date of the decree, a decree against such tenant for an arrear of rent in respect of the land from which the landowner desires to eject him shall have remained unsatisfied for fifteen days or upwards.

20. A tenant not having a right of occupancy may be ejected in acordance with the provisions of this Act, *first*, in execution of a decree for arrears of rent or for ejectment; or *second* by notice given by the landowner in the manner described in Section 21.

21. The notice mentioned in Section 20 shall be written in Urdu: it shall specify the lands from which the tenant is to be ejected; and it shall inform him that if he means to dispute the ejectment he must institute a suit for that purpose on or before the fifteenth day of May next after the service of the notice, or vacate the land on or before that date. On the application of the landowner to the Tahsildar or other officer authorized to serve such notices, the notice shall be served by such officers on or before the fif-

teenth day of April, and the landowner shall pay the costs of service. The notice shall, if practicable, be served personally on the tenant. If the notice cannot be served personally on the tenant, service may be made by affixing it at his usual place of residence, or, if he has no such place of residence in the district in which the land is situate, at the village *chaupal* or some other conspicuous place in the village in which the land is situate.

22. If the tenant on whom such notice of ejectment has been served, fails to institute a suit to contest his liability to be ejected on or before the fifteenth day of May next after the service, his tenancy of the land in respect of which the notice has been served shall be held to cease on that date, unless after the service an agreement shall have been entered into between him and the landowner authorizing him to continue to occupy the land.

23. If no such suit be brought and the landowner require the assistance of the Court to eject any person whose tenancy is alleged to have ceased under the provisions of Section 22, he may apply for such assistance, and if the Court be satisfied that notice of ejectment was duly served on such person, it shall give such assistance accordingly. Provided that nothing done by the Court under the previous part of this Section shall affect the right of any tenant to institute a suit against the landowner on account of illegal ejectment and to recover compensation for the same.

Abandonment.

24. When a tenant having a right of occupancy has abandoned his land for twelve months without payment of rent or making provision for the cultivation of the land or for payment of rent, his right of occupancy shall be held to have lapsed.

Relinquishment of Land.

25. Every tenant shall continue liable for the rent of the land in his holding unless on or before the 15th day of May in any year he shall give notice to the landowner or his recognized agent of his desire to relinquish such land, or unless such land shall have been let to any other person by such landowner or his agent. If the landowner or his recognized agent refuse to receive such notice the tenant may make application to the Tahsildar or, proper officer and written notice shall thereupon be served on such landlord or agent in the manner, *mutatis mutandis,* provided by Section 21.

Of certain incidents in the tenure of tenants having a right of occupancy.

26. Any tenant having a right of occupancy and having an heir or heirs entitled to succeed him may sell or otherwise transfer his tenure, subject to any restrictions imposed by Hindu or Mahomedan law or local usage, on payment to the landowner of a sum of not more than ten *per centum* on the *bonâ fide* selling price, or in case of gift of the estimated value; provided that in every case the landowner shall have a right of preference or pre-emption. In like manner tenants having a right of occupancy but having no heir or heirs entitled to succeed shall be entitled to dispose of their life interest in such tenure.

27. Any tenant having a right of occupancy suffering under a disability to plant or cut down trees planted by himself or of spontaneous growth, may obtain removal of such disability on payment of compensation to the landowner.

28. Any tenant having a right of occupancy may underlet or otherwise temporarily provide for the cultivation

of his land whenever for any sufficient reason he is unable to cultivate it himself.

OF IMPROVEMENTS, AND COMPENSATION FOR TENANTS' IMPROVEMENTS.

29. The landowner may improve the land of a tenant having a right of occupancy, or the tenant may improve his own land. If both parties wish to make the same improvement, the landowner shall have the preference.

30. If a tenant, or the person from whom he shall have inherited, make any such improvements on the land in his occupancy as are hereinafter mentioned; and if a landowner serve, under this Act, upon any such tenant not having a right of occupancy, or his representative, a notice of ejectment from the land in his occupation,

Or demand from any tenant or his representative an enhanced rent in respect of such land higher than the rent which he has agreed to pay,

Or bring a suit to eject or to enhance the rent of any tenant having a right of occupancy, or his representative,

The tenant or his representative, as the case may be, shall be entitled to compensation for the outlay, in money or labor or both, in making such improvements which shall have been effected by him or the person from whom he inherited, or whom he represents, * within twenty years next before the service or institution of such notice or suit as aforesaid.

* His Honor would omit this clause.

31. The word "improvements" as used in the last two preceding Sections means works by which the annual letting value of the land has been, and, at the time of demanding compensation, continues to be increased, and shall comprise—

(1). The construction of wells or works for the storage of water, for applying water for irrigation, for drainage, and for protection against floods;

the reclaiming and clearing of waste lands and jungles; and other works of a like nature;

(2). The renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value.

32. Such compensation may, at the option of the landowner or his representative, be made—

(1). By payment in money;

(2). By the grant of a beneficial lease of the land by the landowner or his representative;

33. In case of difference as to the amount or value of the compensation tendered, the amount of the payment on the term of the lease or both shall be determined by the Court: Provided that in determining such amount the Court shall take into account any assistance given by the landowner either directly at the time of making such improvements, or subsequently by allowing the tenant to hold at a rate of rent more favorable than the rate at which he otherwise would have held.

Of Rent in kind.

34. Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop or other procedure of a similar nature requiring the presence of both tenant and landowner, either personally or by recognized agent, if the landowner shall neglect to be present at the proper period, or if a dispute shall arise between the parties regarding such division, estimate or appraisement, either party may present an application to the Court requesting that a proper officer be deputed to make the estimate, or appraisement.

35. On receiving such application the Court shall issue a written notice to the other to attend on the date and at the place specified in the notice, and shall depute a suitable person before whom the division, estimateor appraisement shall be made. The award of such person in respect of such division, estimate or appraisement shall be final, unless within three months from the date thereof either party shall institute a suit to set it aside.

36. Nothing in the above provisions shall effect the terms of any agreement in writing which may have or may be entered into between a landowner and tenant in respect to tenure of land, payment of rent, or other incident.

Procedure.

37. For the purposes of this Act the Revenue Courts shall be the several Courts mentioned in Section 4 Act XIX of 1865 holding sittings on the Revenue side; but instead of the Judicial Commissioner or Chief Court. the final Court of appeal shall be that of the Financial Commissioner. The Courts referred to in clause first Section 5 shall for the purposes of that Section be deemed Revenue Court. All the provisions of Act XIX of 1865 and Act XXVII of 1867 shall so far as they are applicable, apply to the Revenue Courts.

38. In suits before Revenue Courts under this Act, when reference is made to arbitration, if the parties cannot agree with respect to the nomination of arbitrators, the court shall appoint them.

39 .Claims under Sections 8, 14, 15, 18, 20, 24, 26, 27, 34 and 35 shall, unless otherwise provided for, be heard in the Revenue Courts. The rules relating to Civil Procedure for the time being in force in the Punjab shall, so far as they are aplicable, apply to all suits brought before the Revenue Courts under this Act.

FROM

THE HON'BLE E. L. BRANDRETH,

To

T. H. THORNTON, ESQUIRE,

SECRETARY TO GOVERNMENT, PUNJAB.

November 15th 1867.

SIR,

With my letter No. 2203, dated 24th September last, despatched from the office of the Rawul Pindee Commissionership, I submitted a draft bill and some observations on certain matters connected with the tenure of land in the Punjab. A letter (No. 649, November 5th 1867), recently received from your office, contains instructions for the formation of a committee at Lahore, to consider the question of tenant rights; but my letter above referred to, also contained proposals for *restricting the sub-division of land among land-owners* No doubt the two questions are not necessarily connected, and may easily be made separate subjects for consideration and legislation. I should be glad therefore to know, whether His Honor the Lieutenant Governor will support my proposals *for some legislation in regard to this latter question,* and request the favour of your obtaining his orders with reference thereto.

2. *Many Jagheerdars* in different parts of the Punjab have, I believe, agreed to limit the future sub-division of their jagheers; and considering that the evils of too minute sub-division are no less experienced in regard to revenue paying land, it seemed to me desirable that Lieutenant Governor should have the power of restricting it for the future, at any rate in those parts of the country where *such restrictions would not be opposed* to the *feelings of the land-owners* in general. I have reason for supposing that in some districts, in those villages at least where all the culturable land has been taken up, and where there are already too many mouths to feed, the land-owners would very gladly have a stop put to further sub-division. If His Honor considers the matter of sufficient importance I trust he will direct such further enquiries being made on the subject as he may consider necessary.

(Signed) E. L. BRANDRETH.

A bill to amend and declare the law relating to certain matters connected with the tenure of land in the Punjab.

Whereas it is expedient to amend and declare the law relating to the rights of landowners and tenants and to other matters connected with the tenure of land in the Punjab: it is hereby enacted as follows :—

PART II.—OF RESTRICTIONS ON SUB-DIVISION.

3. It shall be lawful for the Local Government to determine in any district or portion of a district what quantity of land of any description shall be held culturable by one plough. After such determination has been notified in the local official gazette, and subject to the exception noted in section 6, no new proprietary shares in land shall be recognized in any Court of Justice, or registered in any public office, or authenticated by any public officer, unless the share of each claimant shall be equal to a quantity of land thus determined to be culturable by one plough. If the land be not sufficient to give each claimant a share of the extent thus determined, the shares in the land shall be apportioned in the following order:—1st, among those who have claims to the largest shares; 2nd, among those who belong to the eldest branch of the family; 3rd, among those who are eldest by birth, so that the share of each claimant shall not be more than the authorized extent. Provided that if a claimant can obtain an increase of the quantity of land under sections 9—15, the provisions of this section may be applied to the increased quantity. Provided also that if the land be equal to, or exceed half as much again as the size of the share determined by the Local Government, it may be divided into two shares.

Illustration. In the village of Bara the Local Government has determined that the extent of each share in unirrigated land shall not be less than 20 acres. In this village a landowner dies leaving 4 sons and 80 (*sic.* 30?) acres of unirrigated land; the custom of the family is that of equal division among the sons; the two elder sons will be entitled to 15 acres each, the two younger sons will not be entitled to any share.

4. Land cultivated by tenants-at-will, and also any share in the undivided culturable waste of a village or puttee, after deducting what may be required by the village community for common grazing ground, shall be included in the extent of land determined by the Local Government to be culturable by one plough; but land held by tenants having a right of occupancy, or by sub-proprietors shall not be included. Where the income of such land together with any miscellaneous or "siwaie" receipts exceeds the annual sum of 12 rupees, it shall be divided among claimants in accordance with the order described in the preceding section, provided that the share of each shall not be less than an annual value of 6 rupees.

5. The shares of tenants having a right of occupancy among themselves, shall be subject to the provisions of the two last preceding Sections, q. v.

6. The following are exceptions to the provisions of Section 3:—

1st. Sub-divisions of land or rent or miscellaneous income from land, however minute, shall be allowed among landowners or tenants who were previously in possession of other similar rights.

2nd. The Revenue Court may sanction the assignment of land of any extent for a garden or for building or for any other purpose not calculated to lead to the impoverishment of the cultivator.

7. It shall be incumbent on all persons who acquire shares under this Act to the exclusion of other claimants to maintain such claimants during their minority if they have no other means of support.

8. No landowner who has been out of possession more than one year and whose share is less than the quantity of land determined by the Local Government to be culturable by one plough shall be entitled to receive possession; but only the price of his share to be fixed by arbitration if his share is in the possession of a landowner who owns other land, and if such landowner is willing to purchase it.

9. Any landowner whose share is less than the quantity of land determined by the Local Government to be culturable by one plough may acquire possession of the land of any tenant whose land is less than the quantity thus determined on payment of compensation to be fixed by arbitrators to the tenant. The compensation shall be calculated with reference to the profits enjoyed by the tenant, not those which will accrue to the landowner.

Remarks regarding some of the Sections.

Remarks on Section 3.

The excessive sub-division of the land in parts of the Jhelum and Shahpoor districts, and the pressure of what, if there were not so many mouths to feed, would be very light assessments, has been remarked on in the settlement reports of those districts, and a parallel to the same evil is to be met with I believe in many other parts of India. In Rawul Pindee also there are many excessively small holdings. The following may be taken as an instance of hundreds that might be quoted: In Mouza Burateean, which was founded 100 years ago, one Shurf then held 20 ghoomaos; his descendants, who now share the estate among them, are 24 in number, and some of them have no more than two kunals each In the Salt Range there are several villages in which the average holdings are only from 3 to 4 acres, many individuals of course have much less, though 20 acres is considered to be the proper holding for one family, all extra hands being superfluous. Captain Davies informs me that the existing owners of these small holdings would gladly, if they could, put a stop to further sub-division, but they have no power to do so under their present laws. A great many Jagheerdars in all parts of the Punjab, I believe, a few years since at the invitation of Government agreed to restrict the sub-division of their estates among their descendants. In Bombay the fields are all of a fixed size, and this is apparently the reason of the ease with which the very high rates of land revenue in that Presidency is said to be raised.

It should be considered also that sub-division could not go on under the Sikh Government to the extent that it does under our rule. Mr. Prinsep, in remarking on the number of absentee co-partners recorded in the last settlement papers of certain districts, states that " the underlying cause at the bottom of " these 'disappearances' was simply this, that land at the time of settlement had " no value Former assessments had been very heavy, pressing on individual " proprietors in such a way as to reduce them to a state of melancholy, though " temporary pauperism" (No. 111, 31st March 1866). But it is evident that the pauperism of individuals may be quite as much brought about by too minute sub-division. In the small district of Goojrat some 2,000 of these absentees have been re-admitted since the last settlement.

It will be observed that no attempt is made to interfere with existing holdings, that it is only further excesses of sub-division which it is proposed to prohibit, and that, only in such places as, in the opinion of the Lieutenant Governor, might advisedly be subjected to the prohibition. Of course the Lieutenant Governor would proceed cautiously at first, and not extend the rule to those villages in which he should have reason for thinking it would be distasteful to the people, or where there was sufficient land available to render its extension unnecessary.

In some European countries legal limits have been fixed on sub-division, and the excessive smallness of holdings in other countries is admitted to be a great evil, but it is believed that the evil elsewhere is nothing to what it is in India. I extract the following on the subject from Mill.* "He (Arthur Young) recommends accordingly that a limit "of sub-division should be fixed by law, and this is by no "means an indefensible proposition in countries, if such there are, where the "morcellement having already gone farther than the state of capital and the "nature of the staple articles of cultivation render advisable, still continues "progressive. That each peasant should have a patch of land, even in full "property, if it is not sufficient to support him in comfort, is a system with all "the disadvantages, and scarcely any of the benefits, of small properties, since "he must either live in indigence on the produce of his land, or depend as "habitually as if he had no landed possessions, on the wages of hired labour: "which, besides, if all the holdings surrounding him are of similar dimensions, "he has little prospect of finding. The benefits of peasant properties are con-"ditional on their not being too much sub-divided; that is, on their not being "required to maintain too many persons, in proportion to the produce that can "be raised from them by those persons."

* Political Economy, Volume I—4th Edition, page 339.

On Section 8.

In the settlement records of some districts the names of absentees have been entered by order of the Settlement Officer. Though this was not done in any way at the request of the absentees themselves, who in most if not all cases knew nothing whatever of what had taken place at the time, yet it has been held by the Financial Commissioner that, in consequence of such entries, the absentees have a valid claim to be put in possession of their original shares. Absentees of 100 years have valid claims in accordance with this ruling. In the Cis-Sutlej States, the late Commissioner I understand, ignored all limitation rules when a claim to land was in question. It is not my purpose here, however, to question the legality of these proceedings, I refer to them on other grounds. There can be no doubt I imagine that in the majority of cases, the land was abandoned because in consequence of the pressure of the demand of the former Government, the land could not produce adequate subsistence for all its owners; now, however, that there is something to be got out of the land in consequence of the light assessment, these absentees turn up from all parts and claim their ancient shares. Such claims are not few and isolated; but are very numerous in those districts where the settlement records, as interpreted by the Financial Commissioner, admit of their being brought forward. I am far from wishing to put any prohibition upon absentees being reinstated within the limitation periods wherever the land claimed will afford adequate means of subsistence, but I do not think that existing holders of small properties ought to be impoverished by further sub-division, if they are willing, as I have no doubt they will be found, to pay a fair price for the share of the absentees which they hold, and I would allow them to purchase any such shares

at a valuation wherever it was less than the area culturable by one plough, and I would give them this option not only in cases of long dispossession, such as those above referred to, but even in cases where the absentee had been out of possession for a whole year.

On Section 9.

Though I hesitate to recommend any disturbance of existing possession among landowners, I think it might be allowed where the land was held by a cultivator having a right of occupancy only.

[illegible]

[illegible]

[illegible] the Government [illegible]

3. "Tenant" means any person not being a sub-tenant who is liable to pay rent, or his representative.

4. "Rent" means whatever is payable on account of the use or occupation of land, [illegible] of land revenue.

[illegible]

Right of occupancy.

5. [illegible] right of occupancy in such land.

[illegible]

[illegible] right of occupancy in such land [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

A Bill to amend and declare the Law relating to certain matters connected with the tenure of Land in the Punjab.

(*As amended by the Lahore Committee of November* 1867.)

Preliminary.

1. "Land-owner" means any person not being the Government or assignee of the Government Revenue, entitled to receive rent.

2. "Tenant" means any person not being a sub-proprietor, who is liable to pay rent, or his representative.

3. "Rent" means whatever is payable on account of the use or occupation of land, subject to the assessment of land revenue.

Of certain rights and liabilities of Land-owners and Tenants.

Right of Occupancy.

4. Tenants who continuously possessed proprietary rights in lands occupied by them, and have lost those rights otherwise than by operation of the law of treason, shall, in the absence of special agreement to the contrary, have a right of occupancy in such lands.

5. Tenants recorded at a Regular Settlement duly sanctioned by Government prior to the passing of this Act as having a right of occupancy in the lands held by them, or, in the case of lands of which there has been no such Settlement, tenants who have held their lands continuously from 20 years before 1st April 1849, to the date of the passing of this Act, shall, in the event of dispute between such tenants and the owner of the land, be presumed to have rights of occupancy in such lands until—

First.—It be proved in the Civil Court that such tenant has voluntarily at a date subsequent to such Settlement or at a revision of Settlement, or where there has been no Settlement at a date within 20 years from 1st April 1849 surrendered, or admitted that he does not possess, such rights of occupancy.

Secondly.—It be established in the Civil Court that the Settlement Record was erroneous, or contrary to village custom.

Explanation—(First). Proof that within 40 years before the institution of the suit, tenants of a similar class and under similar incidents of tenure in the same or neighbouring villages (other than tenants specified in Section 4) have been ejected from their holdings, shall create a rebuttable presumption, that the entry in the Settlement Record is erroneous, or contrary to village custom.

(*Second*). If the tenant shall have voluntarily exchanged such land or any portion of such land for other land belonging to the same land owner, such varied occupancy shall for the purposes of this Act be held to be continuous occupancy.

6. In any district in which a Regular Settlement shall have been effected prior to the passing of this Act, any tenant whose name has been omitted from the Settlement Record, or who has been recorded as a tenant-at-will, shall be presumed to be a tenant with rights of occupancy; provided it be established in a Civil Suit that his status is the same as that of other tenants

having rights of occupancy in the same or neighbouring villages, and in such cases the onus of proving that he is not a tenant with rights of occupancy shall rest on the land-owner.

7. No tenant-at-will shall acquire right of occupancy by mere lapse of time.

8. Nothing in Section 6 shall affect the rights of any tenant which have been determined by the decision of a Civil Court.

Of the enhancement of rent.

9. No tenant having a right of occupancy shall be liable to enhancement of rent, except by the decree of a Revenue Court, or award of a Settlement Court.

10. In making such decree or award the following condition will be observed :—

In no case shall the rent payable by a tenant having a right of occupancy be more than 85 per centum of the highest rent which the land is estimated as capable of yielding.

Note.—This rate is based on the supposition that all extra cesses, such as Road Fund, Putwaris' fees, and the like, are paid by the land-owner.

11. After a decision shall have been passed in accordance with Sections 9 and 10, no suit shall lie for re-enhancement of the rent until the expiration of five years from the date of such decision, unless—

(1). Meanwhile a general revision of Settlement shall take place ; or—

(2). The quantity of land held by the tenant shall be ascertained to be greater than the quantity for which rent has previously been paid—

(3). The productive power of the land shall have been increased by an improvement of the description mentioned in Section 26 made by the land-owner.

12. Every tenant-at-will shall pay for the land in his occupation such rate as may be demanded by the land-owner, but such tenant shall not be liable to pay rent higher than that payable by him for the last preceding year, unless he shall have received notice of the enhancement, and such notice shall have been recorded by the Putwaree, or if for any sufficient reason such record cannot be made by the Putwaree, a written notice put up in some conspicuous place in the village in which the land is situate on or before the 1st day of May, or at such other time as may be in accordance with the custom of the village in the year in which the enhanced rent is demanded.

Abatement of Rent.

13. Every tenant having a right of occupancy shall be entitled to claim abatement of the rent previously paid by him—

(1). If the area of the land has been diminished by diluvion or otherwise; or be proved by measurement to be less than the quantity for which rent has been previously paid by him ; or—

(2). If the productive powers of the land have been decreased by any cause beyond the power of the tenant.

Provided that no tenant shall be entitled to claim abatement under this Section, unless it appear that the rent previously paid by him is more than the land-owner is entitled to under Section 10 of this Act.

Commutation of Rent.

14. No commutation of rate in kind into rent in money shall take place without the consent of the land-owner, or of rent in money into rent in kind without the consent of both land-owner and tenant.

Remission of Rent.

15. It shall be lawful for the Court in making a decree for an arrear of rent, to allow such remission for the rent payable by any tenant as may appear equitable if the area of the land in the occupation of such tenant be diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought or hail or other calamity beyond the control of the tenant, to such an extent that the full amount of rent payable by such tenant cannot, in the opinion of the Court, be equitably decreed.

Ejectment.

16. Except as provided in Section 19, no tenant-at-will shall be liable to be ejected from the land in his occupancy unless one month's previous notice shall have been given him in the manner prescribed in Section 12 for notices of enhancement of rent.

17. No decree of ejectment against a tenant having a right of occupancy shall be made unless, at the date of the decree, a decree against such tenant for an arrear of rent in respect of the land from which the land-owner desires to eject him, shall have remained unsatisfied for fifteen days or upwards.

18. Except as provided in Section 19, no tenant under this Act upon whom notice of ejectment shall have been served under Section 16, or against whom decree of ejectment shall have been given under Section 17, shall be ejected from the land occupied by him, except on such date as may have been fixed in the village administration paper; and if no such date have been fixed, then between the 1st day of May and the 15th day of June.

19. If any tenant from whom an arrear of rent is due fail, without sufficient cause, to cultivate the land on which such arrear is due, if a tenant-at-will he may be ejected any time without the notice required by Section 16, or, if a tenant with right of occupancy the decree of ejectment may be enforced at any time.

Abandonment.

20. When a tenant having a right of occupany has abandoned his land, his right of occupancy shall be held to have lapsed, and omission both to cultivate and to pay rent or to make provision for both cultivation and payment of rent for one harvest shall be held to be abandonment.

Relinquishment of Land.

21. Every tenant shall continue liable for the rent of the land in his holding unless at the time mentioned in the administration paper, or if no such time be mentioned on or before the 15th day of May in any year, he shall give notice to the land-owner or his recognized agent of his desire to relinquish such land, or unless such land shall have been let to any other person by such land-owner or his agent. If the land-owner or his recongized agent refuse to receive such notice the tenant shall proceed in the manner, *mutatis mutandis*, provided by Section 12.

Of certain incidents in the tenure of tenants having a right of occupancy.

22. Any landowner who may prove to the satisfaction of the Court that the land in his possession is insufficient for the support of himself and his family, provided notice shall have been served on the tenant one full year before, shall obtain a decree of Court enabling him to purchase the right of cultivation of a tenant having right of occupancy on payment of the full value of such right.

23. Any tenant having a right of occupancy and having an heir or heirs entitled to succeed him, may sell or otherwise transfer his tenure, subject to any restrictions imposed on the disposition of property generally by Hindu or Mahomedan law or local usage, on payment to the landowner of a sum of ten per-centum on the *boná fide* selling price or estimated value; provided that in every case the landowner shall have a right of preference or pre-emption.

24. Any tenant having a right of occupancy suffering under a disability to plant or cut down trees planted by himself or of spontaneous growth, may obtain removal of such disability on his agreeing to pay reasonable compensation to the landowner.

25. Any tenant having a right of occupancy may under-let or otherwise temporarily provide for the cultivation of his land whenever for any sufficient reason he is unable to cultivate it himself.

Proviso.—Provided that the land shall lapse to the land-owner if it appears that for a period of more than three years neither the tenant nor his heir received any portion of the rent of the land.

Of improvements and compensation for tenant's improvements.

26. The word "improvements" as used in the two following sections means works by which the annual letting value of the land has been and at the time of demanding compensation continues to be increased, and shall comprise—

(1) The construction of wells or works for the storage of water, for applying water for irrigation, for drainage, and for protection against floods; the reclaiming and clearing of waste lands and jungles; and other works of a like nature.

(2) The renewal or reconstruction of any of the foregoing works or such alterations therein or additions thereto as are not required for maintaining the same and which increase durably their value.

27. The land-owner may make in the land of any tenant having the right of occupancy any of the improvements described in Section 26, and any tenant having right of occupancy may require his land-owner to effect any such improvements. If the landowner refuse or neglect to commence and within a reasonable time to complete such improvements, the tenant may, on satisfying the Court that such improvements are desirable and that the land-owner has refused or neglected to execute them, obtain an order authorizing him to effect such improvements himself.

28. If a tenant with a right of occupancy or the person from whom he shall have legally acquired the land shall have made or may hereafter make any such improvements on the land in his occupancy as are hereinafter mentioned, and if the landowner demand from any such tenant an enhanced rent in respect of such land or eject such tenant, the tenant shall be entitled to reasonable compensation for the outlay in money or labor or both in making such improvements which shall have been effected by him or the person from whom he legally acquired it, or whom he represents, for a period not exceeding 20 years before the ejectment or institution of such suit as aforesaid.

29. Any tenant recorded as having a right of occupancy in the land held by him at a regular settlement duly sanctioned by Government but who has subsequently been ruled to be a tenant-at-will may obtain compensation for improvements effected by him before such ruling in the manner *mutatis mutandis*, provided by Sections 27 and 28 for tenants having a right of occupancy.

30. Such compensation shall, in case the tenant be ejected, be made by payment in money, and in case of enhancement of rent by the grant of a beneficial lease of the land by the land-owner or his representative.

31. In case of difference as to the amount or value of the compensation tendered the amount of the payment shall be determined by the Court. Provided that in determining such amount the Court shall take in to account any assistance given by the landowner either directly at the time of making such improvements or subsequently by allowing the tenant to hold at a rate of rent more favorable than the rate at which he otherwise would have held.

Of Rent in Kind

32. Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a similar nature requiring the presence of both tenant and land-owner either personally or by recognized agent, if either party shall neglect to be present at the proper period, or if a dispute shall arise between the parties regarding

such division, estimate or appraisement, either party may present an application to the Court requesting that a suitable person be deputed to make the division, estimate or appraisement.

33. On receiving such application, the Court shall issue a written notice to the other party to attend on the date and at the place specified in the notice, and shall depute a suitable person before whom the division, estimate or appraisement shall be made. The award of such person in respect of such division estimate or appraisement shall be final, unless within three months from the date thereof either party shall institute a suit to set it aside.

34. Nothing in this Act shall affect the terms of any agreement which may have been or may be entered into between a land-owner and tenant in respect to tenure of land, payment of rent, or other incidents.

Procedure.

35. For the purposes of this Act the Revenue Courts shall be the several Courts mentioned in Section 4, Act XIX of 1865, holding sittings on the Revenue side, other than Courts of Small Causes, but instead of the Judicial Commissioner or Chief Court, the Final Court of Appeal shall be that of the Financial Commissioner. The Courts referred to in clause 1, Section 5, shall for the purposes of that Section be deemed Revenue Courts. All the provisions of Act XIX of 1865 and Act XXVII of 1867 shall so far as they are applicable apply to the Revenue Courts.

36. Claims under Sections 9, 14, 15, 17, 19, 20, 22, 23, 24, 27, 28, 29, 32, and 33, shall unless otherwise provided for be heard in the Revenue Courts. The rules relating to Civil Procedure for the time being in force in the Punjab shall so far as they are applicable, apply to all suits brought before the Revenue Courts under this Act.

Notes by Lahore Committee, to be appended to their Revised Bill.

NOTE A.—The Committee approve of Section 23, subject to the condition of its being ascertained through an inquiry made by direction of the Lieutenant Governor, that it would be acceptable to the people in general.

Carried.

NOTE B.—*Proposed.* That this Committee recommend to the Lieutenant Governor that before Section 5, 6, 22, 23 and 24 of this draft bill are passed into law, a Commission be appointed by Government to investigate and report on existing relations between land-owner and tenant in the different districts of the Punjab, commencing with those most recently brought uuder revised settlement.

Carried.

The following Additional Section was proposed by Mr. Saunders and withdrawn.

NOTE C.—Any tenant declared to have right of occupancy who can prove himself to have exercised, irrespective of the land-owner, such rights as are usually exercised only by a land-owner, sinking of wells, planting of gardens or groves, &c., and not to have paid any rent, notwithstanding he does not belong to the proprietary body, shall on proving these facts to the satisfaction of the Court, obtain a decree enabling him on payment of full value of land-owners's right, to obtain the proprietary right in his holding, and any right he may then be enjoying in the common lands at a reduction of 25 per cent on the market value of the land, and this amount shall he held to represent the tenant's rights in this land.

1.—BY 3 MEMBERS UNDERSIGNED.

2.—BY THE PREMIER.

[NOTE.—*The Nos. of Sections referred to in these English dissents, are those of the Revised Bill proposed by the Lahore Committee with the exception of that of Jaishi Ram, in which the Nos. refer to the Murree Bill.*]

1.—BY 5 MEMBERS UNDERSIGNED.

I beg to record my dissent from the decision of the Committee on Section 20, altering the term from twelve months to one harvest; 1st. Because it is an alteration of the existing law, for which no necessity is shown; and 2nd, it is inexpedient, being destructive to the interests and rights of tenants with right of occupancy.

(Sd.) C. U. Aitchison. (Sd.) W. E. Blyth.

(Sd.) R. Young. (Sd.) T. D. Forsyth.

(Sd.) E. L. Brandreth.

2.—BY MR. PRINSEP.

I regret that I can only give my qualified assent to such portions of the amended Draft of the Act proposed by the Committee, as refer to the heads of "*Rent*" and "*Ejectments.*"

The Sections relating to "*Commutation of Rent,*" "*Abandonment* and *Relinquishment of Land*" I heartily approve of as now amended.

But as regards the whole of the Sections under (1) *Rights of Occupancy,*" (2) "*Incidents of Tenure,*" *and* (3) "*Improvements,*" with the exception of clause 29, I entirely dissent from, and defer giving any approval to a Bill relating to such subjects till the last proposal of the majority of members, asking for enquiry by an authorized commission, into the existing relations of land-owner and tenant has been attended to. The members were generally of one mind, that the facts as placed before them * really amounted to nothing; the evidence consisted merely of opinions of officers; and until usages were enquired into, and definitions as to what constituted rights of occupancy, as accepted by the customs of the country, were drawn out and accepted as reliable, they were all working in the dark. I am satisfied the whole of the Committee's enquiry has been too hasty; and real facts have not been looked into or accepted; and until such has been done it is quite unreasonable to suppose a Committee so hurriedly convened could pronounce a safe opinion on so important a matter as that of framing a tenant right or tenant rent bill for the province.

* Replies to questions on tenants right.

I therefore sign these papers with greatest reluctance, and reserve to myself the right of submitting my dissent separately hereafter to Financial Commissioner on the highly objectionable clauses above alluded to. I earnestly solicit that I may be allowed to do so, as it is evident that a number of new rights have been secured to the so called right of occupancy tenants in this bill, which are totally at variance with long established usages of the country, and have never been demanded by any of the tenants themselves.

The bill has elevated these so called occupancy-right tenants to the position of *actual co-proprietors* in the profits of land, allowed them to improve the land by such works, as wells, and has aim ed at not only conferring a heritable but transferable occupancy as well, the same almost as proprietary occupancy: a status which no part of the evidence before the Committee has proved to attach to these tenants anterior to British rule.

I am of opinion there should be no *hurried* legislation; nothing should be done likely to give umbrage to the feelings of the people at large.

The objectionable clauses of this amended draft, if accepted without enquiry, will lead to mischief and injustice of the most serious natu re; and I confess that in all my career in India, I have never witnessed such a bouleversement of the custom of a country as will be brought about if this draft Act, as it stands, becomes the law of the land.

Under this reservation, and on the distinct understanding that a Commission will be allowed, and on no other conditions, do I attach my signature to these papers.

(Signed) E. A. PRINSEP,
Settlement Commissioner.

3.—BY MR. BRANDRETH.

I hesitate about giving my assent to the 22nd Section; if Mr. Prinsep is correct in his conclusion that the great mass of those cultivators who were recorded as hereditary at former settlement can be proved to have no rights of occupancy, the proprietors will of course be able to eject such cultivators at their pleasure; but I do not see why those cultivators who are shewn to have undoubted rights of occupancy should be compelled to part with those rights.

(Signed) E. L. BRANDRETH.

4.—BY MR. AITCHISON.

Although I am in favor of the principle of empowering landlords to buy out hereditary tenants, and hereditary tenants buy up the landlord's right, under certain fixed conditions, I strongly dissent from the decision of the majority of the Committee embodied in Section 22 of the amemded draft bill.

1st. The Section as it stands, without a corresponding provision in favor of hereditary tenants, is unjust. There are hundreds of men who under this bill will be tenants with rights of occupancy whose position differs little in reality from that of landowners. They have cultivated the land from time out of mind, they have paid no rent other than the Government revenue, they have paid revenue by bâch like proprietors, they are occasionally even recorded as entitled to a share of *shamilat* lands in the event of partition. These men, merely, from the fact of their having been recorded as *tenants*, whatever that may have meant at the time, will come under all the liabilities of tenants with

right of occupancy under this bill. Over such men the landowner's right is merely potential, and it is unjust to give a preference to such potential rights over rights of a very valuable kind which have been long actually enjoyed. In such cases if the power to buy up rights is given at all, the tenant with hereditary right should have the power of ridding himself of the landowner's hold on him.

2nd. I object to making the landowner's need of the land the sole condition on which the hereditary tenant must give way, without reference to the circumstances under which the landowner may have become impoverished, or the circumstances under which the hereditary tenant may have acquired, cultivated and improved his holding, or the area of land available for cultivation or purchase in the village and neighbourhood, or in short any other consideration of any kind except the landowner's need.

3rd. I object to giving such weight to a mere notice served by a land-owner that it shall necessarily carry with it a decree of Court.

(Signed) C. U. AITCHISON.

5.—BY MR. SAUNDERS.

I have signed the Draft Bill, reserving to myself the right to dissent upon certain portions of the Bill that have been passed by the majority of the Committee, but in which I do not concur.

Section V will throw the onus of proof on to the landlord when a tenant can prove that other tenants, of whatever description they may be have been recorded as having a right of occupancy; whereas I hold if the tenant objects to the record as it stands, the whole onus of proving that according to custom of the country he is entitled to be recorded as a tenant having rights of occupancy should rest with the person (whoever he may be) wishing for an alteration in the record.

Also it is essential that some definitions should be entered in this Section to guide our Courts in declaring what particular acts of omission on the part of land-owners, and what acts of commission on the part of tenants, shall confer the right of occupancy, for as it at present stands, decisions under this Section may vary most considerably in the several villages of one district.

Section VI enables a cultivator who has known his status to be *only* that of a tenant-at-will to dispute the entry, not within 12 years of being made aware of such entry, but within one year of dispossession of his present holding.

The Bill therefore, though declaring no right shall grow by mere lapse of time, allows this right to be disputed, and a better status obtained, at any subsequent date that may suit the convenience of the tenant.

It must be remembered that the law of the country, as it at present stands and is acted upon, infers a culpable negligence on the part of any

person who fails to contest an entry in the record of which he has been made aware for a period of 12 years. Thus, a tenant will be in a better position than a land-owner to whom the above mentioned law has hitherto been applied. It should also be remembered that a tenant as well as a land-owner is able to obtain a copy of the entry from the Patwaree of his village, he therefore has every facility for knowing what has been recorded about him, notwithstanding which this Section will allow his position to remain undefined till he be evicted.

It has been remarked that the land-owner has been allowed to re-open the position held by tenants with right of occupancy, that therefore it is only justice that tenants-at-will should have the same opportunity; but I would remark that the cases are not analogous. The tenant has ever since the first formation of the record had every opportunity to re-open the question of his position, and in hundreds of cases obtained the declaration sought for, while the land-owners have been virtually debarred from the use of our Courts, as it has been held, over and over again, that the mere entry in the Settlement record of the right of occupancy has prevented the Court from enquiring into the local custom prevailing on the subject. For proof as to the correctness of this statement, I would refer to the evidence given in answer to question 4 of the Government Circular No. 2, dated 29th May 1867.

I believe the rule allowing, where exchange of land has occurred, occupancy still to be considered as continuous occupancy, to be entirely opposed to what has hitherto been considered the custom of the country, for in hundreds of cases I have myself investigated, I have invariably found this incident to be admitted by the tenants as one of the main proofs of their not having right of occupancy. Such exchange of fields before annexation may be deemed by Courts voluntary, because no tenant would have been upheld in such opposition to the will of landowner.

Section 23, creating the right of a tenant to dispose of his right of occupancy, may be expedient, but I believe it to be so entirely opposed to the feelings and desire of the people, that I would refrain from agreeing to the entry in this Bill of such a Section till the views of the people of the country have been ascertained; but I should much like to see some broad scheme for the enfranchisement of the double rights in land framed and submitted for the general opinion of the country at the same time, and which I believe would be most favorably received both by tenants and land-owners.

I also beg to record my most earnest hope that this Bill, with the exception of the clauses on rent and improvements, will not be passed into law till it may have been translated and put into the hands of the people for a period sufficient to allow them to express their opinion on the general provisions of the Act.

(Signed) LESLIE S. SAUNDERS.

6.—BY EXTRA ASSISTANT COMMISSIONER JAISHI RAM.

SECTION IX, CLAUSE 1ST:—

A.—There are instances that the proprietors are receiving $\frac{3}{4}$ of the whole produce of land for their rent. *B.*—Again, there is no doubt that in some favorable year the produce of land is three times as much as in some

common year. Now, supposing a proprietor receives at present $\frac{1}{3}$ of the whole produce, and supposing it is 100 Rs., it can be 3 times as much by the 1st instance, A, say 300 Rs. ; this again can be multiplied by 3 according to 2nd instance, B, *i. e.*, 900.

It can also be added that improvements in culture, skill and facilities afforded to it by the invention of proper tools and use of machinery will still more increase the amount of rent.

Is this the highest rent the land is capable to yield mentioned in Section 9?

Then 85 per cent of this sum is 765 rupees.

Can a proprietor raise his rent in proportion to the annual increase of capacity of land without any regard to the right of tenant (15 per cent) until the capability of land surpasses the minimum of 765, when the demand of proprietor will cease and the rest of the benefit will go in tenant's pocket, or his right of 15 per cent will always follow the present capability of the land, *i.e.*, the proprietor will never be able to have his rent more than 85 per cent of the present productive capacity of the estate ; if so then I have two questions :—

Whether the Government will confine its demand to $42\frac{1}{2}$ instead of 50 per cent, as is the law of the present day?

And whether a proprietor shall be empowered in some bad harvest or some occasion of loss to recover $\frac{3}{8}$ of his loss from the tenant?

Will, in the case of sale of land for balance, the right of tenant remain safe, or will it also lapse with the right of the owner?

The object of my objection is only this, that such a word should not be used at all as a tenant be entitled to receive a share of the rent. But this can easily be said that the proportion of rent to the whole produce of such tenants will always continue the same, as at the time of former Regular Settlement, &c., &c., and in the case of cash payment it will never be more than double of that amount, &c., &c., or double of the Government revenue.

Section 29. Improvement depends upon two things: 1st, natural gift; 2nd, worldly blessings In land possessed by land-owner no difficulty occurs, for he will not undertake it if he is not possessed of these both. But in instance of this Section there seems some difficulty, for if the owner is not possessed of wealth the improvement of a tenant will put him on some distance from the hope of acquirement of his estate; and if the tenant is not possessed of either sources or of both, the proprietor shall be able to reduce him to still humble condition. Supposing he constructed a well, and thus took possession of a part of his land, who is still incapable to buy bullocks for the want of money or carry on the work of irrigation for the want of men. Will then the land-owner be empowered to demand an increased rate, and on default obtain a

decree and in execution eject his tenant. In my opinion the Section should run thus.—If both parties agree to improve their land they can do so, but the land-owner shall have the preference.

(Signed) JAISHI RAM,

Extra Assistant Commissioner.

I have not given my assent to clause 23 (regarding right of transfers by tenants) because I consider that a Commission of some kind should be first appointed to ascertain the general feeling and wants of the people before we create new rights, which tend to perpetuate a double property in the soil.

(Signed) T. D. FORSYTH.

Translations of dissents or remarks given in by the three remaining Native members of the Lahore Committee, who did not, at the time, like Extra Assistant Jaishi Ram, give in their protests in English.

[NOTE.—*The Nos. of Sections referred to in these documents, are those given in the Bill prepared by the Murree Committee.*]

REMARKS OF AGHA KALAB ABID, EXTRA ASSISTANT COMMISSIONER.

SECTIONS 5 AND 6.—Length of possession alone should not constitute a claim to hereditary tenure, unless supported by other strong claims. But if the tenant should have constructed a masonry well, or an irrigation cut from a canal, or planted a garden, or should he have undertaken the liability of paying the Government revenue during the absence or in the case of the insolvency of the landowner, or should the tenant have borne the liabilities and enjoyed the profits, and the land-owner was in such a helpless condition that but for the liabilities undertaken by the tenant, the land would have become deteriorated or transferred to another party—then such a tenant should certainly be entitled to permanent protection. With respect to length of occupancy alone, it will be sufficient to allow the tenant suitable time to derive proper benefit from the land prepared by him, and to obtain other means of livelihood. After the expiration of the term which may be thus allowed to him, he should be left to be dealt with at the pleasure of the landowner.

SECTION 8.—Should be amended in accordance with question 4, *i. e.*, the landowner should have the power of raising the rents, the tenant being left at liberty to bring a suit in Court to contest the enhancement. It should not be compulsory on the landowner to file a suit.

(Signed) KALAB ABID,

Extra Assistant Commissioner.

REMARKS OF MAHOMMAD HAYAT KHAN, EXTRA ASSISTANT COMMISSIONER.

I concur in the above amendment.

"RULE" SECTION 6.—If during the above term, the tenant shall have suffered such land or any portion of such land belonging to the same landowner to be exchanged, such varied occupancy shall, for the purposes of this Act, be *not* held to be continuous occupancy; unless the tenant shall prove by written or oral evidence, that the landowner had by a special agreement consented to recognize, in respect to the new land, all the rights possessed by the tenant in the old land.

REASONS.—By the old usage of this country the right of occupancy of tenants does not extend to the power of exchanging their lands. Most landowners, fearful lest tenants should claim hereditary tenures, at intervals of a few years take away from them lands already in their possession and give them others in lieu to enable them to make their livelihood.

If the *onus probandi*, as above, be not thrown on the tenant, hardship will be done to the landowner, and most complicated objections will be brought forward which it will be most difficult to deal with.

SECTIONS 5 AND 6.—I do not concur in the alteration which has been made. These sections should not be passed until the Government shall have appointed a special commission to ascertain from each district the old rights and privileges of landowners and tenants. My own experience inclines me to the belief, that in the Punjab, before the period of the British rule, length of possession never gave tenants any title to permanent protection.

These sections should be made to accord exactly with usage.

I am strongly opposed to the proposal made by Mr. Aitchison* to the effect that tenants-at-will should (in alteration of the provision of Section 7 of the Bill) be allowed the privilege of altering their status. There is a general dissatisfaction in the Punjab caused by the settlements made under British rule, under the operation of which the interests of the land-owners have suffered very severely. And seeing that parties were recorded as tenants-at-will, at a time, when, without the real facts being ascertained, there was a strong bias in favor of tenants—and that, at such a time, such tenants were held to possess no superior rights of occupancy—what reason is there to encourage litigation by permitting claims to be preferred by such tenants also ?

Note.—I never made any such proposal.
C. U. AITCHISON.

I am of opinion that no tenant-at-will has any title to set up a new claim to hereditary tenure. Parties whose rights were omitted to be properly recorded, should however doubtless be permitted to bring suits for their recovery. Tenants-at-will perfectly understood that they had not been admitted to be entitled to occupancy rights.

SECTION 9. Provides that 15 per centum of the rent shall be allotted to the tenant. This amount is excessive.

For example—suppose the gross proceeds to be Rs. 300. According to existing rates, two-thirds or Rs. 200 are to be separated as the share of the cultivator. From the balance, Rs. 50 goes to Government as revenue, to which should be added road, school and other cesses aggregating Rs. 10. There will then remain a balance of Rs. 40 from the rent out of which according to this section, Rs. 15 will go to the tenant, leaving Rs. 25 only as the share of the land-owner. In other words, in addition to his share as cultivator, the tenant is considered to almost half the amount of the rent, and thus becomes a share-holder. Whereas a tenant never had any title to any share of the rent, and in fact ought not to have any such title.

For the sake of distinction between hereditary and non-hereditary tenants, it is sufficient that a rule has been laid down since the period of the British rule protecting them against eviction without declaring them to be entitled to a share of the rent. Hereditary tenants should not be allowed any share of the rent.

It would however be proper to give the class of tenants described in Section 4, Rs. five per centum of the rent.

SECTION 12.—The following addition should be made at the end of the section—

"Or the land-owner shall at the commencement of the agricultural year, by an entry in the Putwari's diary, have given notice of such enhancement to the tenant."

Clause 2 of Section 13 should be omitted.

The land-owner not being permitted to claim enhancement of rent within five years, the tenant should in like manner have no title to claim abatement of rent within the same period of five years, on the ground of deterioration of the land. Otherwise, groundless claims for abatement of rent will be preferred every year.

The following illustration is given for consideration. In a certain year the tenant grew cotton on ten acres of land, from which crop he derived a profit of one hundred rupees and paid Rs. ten only as rent. The next year, being one of drought, he reaped a crop of grain which yielded Rs. four only. Will the tenant in such case be entitled to abatement of Rs. six in the rent, whereas the land-owner, owing to the limitation term of five years, will have no claim to enhancement of the rent, by a single rupee, on the profit derived from the cotton crop? If the land-owner under certain circumstances is debared from raising his rent until after the expiration of five years, justice demands that the tenant should in like manner have no claim to any abatement of rent during the same period of five years under similar circumstances.

The wording of Section 26 of the bill is entirely opposed to the old usage of the Punjab. No tenant ever had the right to sell or purchase any portion of any land held by him on a cultivating lease. If he has any kind of right that right must exist only up to the date of his possession.

In my opinion it would be just to amend the wording of the section as follows—Should any contrary rule be adopted, a commission should first ascertain the usage in the Punjab, and the rate which may be then laid down should be in accord with such usage.

EMENDATION.

SECTION 26.—No tenant shall have the right of permanently transferring his rights of cultivation without the consent of the land-owner.

(Sd.) MAHOMED HAYAT KHAN,

Extra Assistant Commissioner.

REMARKS OF MAHOMED SULTAN, EXTRA ASSISTANT COMMISSIONER.

My objection against Section 6 is this :—

The period of occupancy, whatever its length, never under any former rule conferred the right of a hereditary tenure. Nor should it now.

There are six substantial grounds on which a claim to a hereditary tenure should be founded. And if action is taken on them, nothing more is necessary.

1st. Where a tenant has constructed a masonry well, either by his own labor or at his own expense.

2nd. Where a tenant has similarly made an irrigation cut from a river.

3rd. Where a tenant on his first obtaining possession of the land paid a *Nuzarana* to the landowner, which payment is known in this country by the name of " *Jhoree.*"

4th. Where a tenant reclaimed the land from jungle or waste, or settled in the village when it was first formed.

5th. When a tenant has borne any share of the liability for the Government Revenue, or paid any share of fines during the Sikh rule.

6th. During the Sikh rule, boundary disputes were attended with fighting. Any tenant who lost his life in such struggles is admitted to have acquired a right to a hereditary tenure.

Section 26—Heretofore tenants have not enjoyed the right of selling mortgaging or transferring their lands. On the contrary they were prohibited from exercising any such right.

The right of permanent occupancy is conceded in consideration of a tenant's good conduct: such right is not transferable.

I have very strong objections against the proposal made for fresh enquiries. Already a set of eight questions were circulated to the various officers and chiefs of all the districts, and their opinions have been taken. Those opinions are more valuable then any which a new commission will be able to elicit. And ere this committees of the people have also been convened to discuss this subject. If a new commission be appointed nothing will result from it except confusion and diversity of opinions.

(Sd.) MAHOMED SULTAN,

Extra Assistant Commissioner.

Additional Memo. given in by Mahommad Sultan, Extra Assistant, in English, after the rising of the Lahore Committee.

[*The Nos. of Sections referred to are those of the Bill prepared by the Murree Committee.*]

It is not necessary to recapitulate the suggestions offered by me at the late Committee held on the tenant-right draft Act. But as the subject is one of vast importance to the people of this country, I think it is incumbent on me, one of the selected members of the Committee, to submit a concise abstract of my opinion.

2. Paras. 5, 6 and 26 of the draft Act, after much discussion between members, were held in abeyance, and the recommendation was recorded that further enquiry be made through the agency of a commission on the subject of customs which fix or form the tenant's right. These three paras. form the base of the question ; and as the members had considerable experience, the aid of the collected opinions of officers of the administration, from the Tehsildar to the Commissioner, and also of the best informed of the people of the Punjab, through eight selected questions and as at several large meetings of the people at Amritsar and elsewhere some years since, the rights and customs of the agricultural interest were extensively discussed and recorded, the necessity for further delay does not appear to exist. For what more can a committee do than what has been done : instead of acquiring a further number of valuable facts, the probability is, that after all the trouble taken errors will creep in, and doubts and differences will arise, as it doubtless will be the object of either party to put forward their interests with greater regard to ultimate profit than truth.

3. The difficulties which have hitherto beset and arisen from the working of the record of tenant's rights, have followed from the absence of a fixed guiding principle. Formerly the term "*moroosie*" was not known, though the rights which gave birth to the term were in general force. Mere occupancy was not among these rights : this came into being when a part of the base rule fixed by the authorities of the North West Provinces, viz., an occupancy of "12 years with the *payment of fixed rent*" came to be overlooked by the younger or less experienced officers working a settlement. It is obvious that the qualification "*the payment of a fixed rent*" refers to the nature of the occupancy of 12 years. The payment of a fixed rent indicates that such payment arose from the admission on the part of the superior holder of some peculiar right inherent in the inferior occupant which required that the rent should be fixed at an unvarying rate. Without such inherent right, the cultivator of a holding, whether occupying for one or fifty or more years, was simply a laborer. Farmers and mortgagers obtain holdings for lengthened terms, but however long the term, the mere fact of occupancy conveys no right.

4. My experience in settlement work over a very large extent of country, where holdings have been acquired in a variety of ways, by a very various population, convinces me that the hereditary right of occupancy by tenants acquired by any of the following six methods should be accepted.

1st. By bringing into cultivation by personal labor or personal expense waste lands at the founding of a village, termed "*Moree*" in the Punjab.

2nd. By improving a holding by culture at personal expense.

3rd. By improving a holding by constructing a well at personal expense.

4th. By the presentation of "*Nazrana*," in the Punjab termed "*Jhoree*," to the orignal proprietor when taking up a holding for the first time.

5th. By participating for a number of years, five or six, in village losses in equal share with the proprietors, on fields or ploughs, or by participating in the extra demands "*Dunds*" of the Sikh Government.

6th. By taking part in boundary disputes as under the old regime, where life was lost. In this case the demand is made by the expressive exclamation "my blood has been spilt on this field."

5. No one occupying a holding on any one of these rights was ever ousted; the Government for the time being maintained them, and were these made the base right of occupancy neither proprietors nor tenants will be heard to murmur. A straight way will be made for all officers, and the administration of our Courts will not exhibit that variance of procedure and variety of result which may now be seen in adjoining districts.

6. Dispossession never took place formerly nor has it since, nor does justice point to a hereditary tenant being left without his fields or compensation fully equivalent to loss, and to give a proprietor the right of ouster, merely because his family has increased or for any other exigency, nullifies the original sense of right; why recognize the existence of a right at all in such case? Besides the fixing of any rent limit so high as has been noted in para. 9 of the draft Act will drive tenants at once to forego the right which legislation would secure for them. This rate should be much reduced.

7. In short, my opinion is that the forming of such a tenantry expensively and upon slight grounds will most injuriously affect the interests of the proprietary body, and that to a very large extent; and that should mere length of occupancy be allowed to obtain a right, it will not take long for tenants in vast numbers to acquire the right of being recorded as "*Moroosie*," or proprietors must continually move their tenants from one holding to another at the risk of greatly reducing the value of the proprietary right, and probably of the cultivated area. But as rights exist, and justice and custom both demand that they should be accepted on good and sufficient cause being shown, no small matter should be allowed to set the acknowledged right aside. The tenant's right so acquired is simply that of continuous occupancy; to give them the right of selling and mortgaging at will, will trench on the right of the proprietor; it was never known to exist and is opposed to justice: if allowed what difference will these be between the tenant and proprietor?

8. I could dilate on the subject, but the unnecessary occupying of valuable time forbids.

(Signed) MD. SULTAN KHAN,

Extra Assistant Commissioner.

Government of India.

HOME DEPARTMENT.

LEGISLATIVE.

BILL AND

Annexure

TO

Bill to define and amend the law relating to the tenancy of land in the Panjab.

STATEMENT OF OBJECTS AND REASONS.

No Act at present exists to provide for the fixing or enhancing of the rent of land in the Panjab, or for dealing with the claims of tenants to rights of occupancy and with other matters relating to the tenancy of land. Acts for these purposes are in existence, which apply to Bengal and the North-Western Provinces, and a Bill on the same subject for the Province of Oudh has recently been introduced in the Council. An enactment for the regulation of these matters is no less required for the Panjab. Whatever appeared applicable to the requirements of the Panjab, in the North-West Provinces' Acts (Nos. X of 1859 and XIV of 1863) and the Outh Bill, has been adopted in the present draft, but other provisions, differing in some very material respects from the provisions made for these Provinces, have been introduced where they appear to be required by the different circumstances of the Panjab. Perhaps the most important point in which this Bill differs from Act No. X of 1859 is that, whereas by that Act tenants who have cultivated for twelve years are deemed to have rights of occupancy in the land so cultivated, under this Bill mere length of possession confers no right of occupancy on the tenant, but only creates a rebuttable presumption of such a right, if he has been entered in the settlement record as having a right of occupancy, or if he has occupied his land for a period of twelve years before the annexation of the Panjab; and mere length of possession under other circumstances creates no presumption of a right of occupancy in favour of tenant.

I propose that this Bill be published for six or seven weeks before I move to pass it. There are so many experienced officers in the Panjab, able to judge of the merits of the Bill, that I trust I shall, in this interval, receive from them valuable suggestions in regard to all the points on which it may require amendment.

E. L. BRANDRETH.

CALCUTTA,
The 30th December 1867.

PANJAB TENANCY BILL.

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A
BILL
TO

Define and amend the law relating to the tenancy of land in the Panjáb.

6th January 1868.

Preamble.

WHEREAS it is expedient to define and amend the law relating to certain matters connected with the tenancy of land in the Panjáb; It is hereby enacted as follows :—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Panjáb Tenancy Act."

Saving of agreements between land-owners and tenants, and of decrees.

2. Nothing contained in this Act shall affect the operation of any agreement entered into between a land-owner and a tenant, or of any decree of Court under which a tenant holds.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Land-owner."

"Land-owner" means any person entitled to receive rent, but does not include the Government, in cases where the Government is entitled only to the land-revenue, nor any mere assignee of land-revenue;

"Tenant."

"Tenant" means any occupant of land liable to pay rent therefor, who does not, at the date of the passing of this Act, possess both a heritable and a transferable interest in such land, and includes the person from whom the land may have been inherited, or otherwise legally acquired;

"Rent." "Rent" means whatever is payable on account of the use or occupation of land;

"Land." "Land" means land subject to a settlement, whether regular or summary, of land revenue.

"Settlement Officer." "Settlement Officer" means any officer employed in making or revising a regular settlement of land revenue.

PART II.

Rights of Occupancy.

Tenant who has lost proprietary rights otherwise than by forfeiture to Government.

4. Every tenant who has at any time possessed proprietary rights in land continuously occupied by him, and who has lost those rights otherwise than by forfeiture to Government, shall be deemed to have a right of occupancy in such land.

Tenant whose name is in settlement records, or who has occupied continuously for certain period.

5. Every tenant whose name appears in the records of a regular settlement sanctioned by the Local Government prior to the passing of this Act, as having a right of occupancy in land which he has continuously occupied from the date of entering his name in such settlement, or who, if no such settlement has been made, shall have occupied the land continuously for a term commencing not less than twelve years prior to the first day of April 1849, shall, unless and until the contrary be proved, be presumed to have a right of occupancy in the land so occupied.

The land-owner may rebut the said presumption by showing—

(1.)—That the entry in the said records was made in violation of the rules laid down by the settlement officer, as set forth in the official report or the records of the settlement;

(2.)—Or that the tenant has voluntarily admitted before any settlement officer, or before any officer authorized to attest mutation of entries in the village record, that he is a tenant-at-will;

(3.)—Or that within the thirty years immediately before the institution of a suit relating to the right of occupancy, other tenants of the same class and holding under similar circumstances in the same or in adjacent villages (excepting tenants specified in section three), have ordinarily been ejected from their holdings at the will of the landowner;

(4.)—Or that on any other grouuds which may satisfy a Civil Court, the tenant is only a tenant-at-will.

Explanation.—If the tenant shall have voluntarily exchanged the land, or any portion of the land, formerly occupied by him, for other land belonging to the same landowner, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as the land given in exchange would have been subject to if the exchange had not taken place.

When tenants not recorded as having right of occupancy shall have same rights as other tenants.

6. Any tenant who at a regular settlement sanctioned by the Local Government prior to the passing of this Act was not recorded as having a right of occupancy, shall, if there is reason for believing that he would have been so recorded if he had preferred his claim at the settlement, have the same rights and be subject

to the same liabilities as other tenants who were recorded in the same settlement as having rights of occupancy.

No right of occupancy acquired by mere lapse of time.

7. No tenant-at-will shall be deemed to acquire a right of occupancy by mere lapse of time.

PART III.

Of Rent.

1.—*Enhancement.*

Liability to enhancement of rent.

8. Every tenant having a right of occupancy shall be liable to have his rent enhanced; but the rent of no such tenant shall be enhanced otherwise than in execution of a decree of Court made in accordance with the following provisions, (that is to say) :—

(1.)—In no case shall the rent payable by the tenant, be more than eighty-five per cent. of the average annual net produce which the land is capable of yielding during a period of five years from the date of suit; and

(2.)—The rent payable by the tenant shall not exceed seventy-five per cent. of such net produce if before the institution of a suit for enhancement or the regular settlement he did not pay rent at any higher rate than that of the land-revenue.

Explanation.—These rates are laid down on the assumption that the land-revenue and all extra cesses, such as Road Fund, Lumberdàrs' fees, Patwaris' fees, School Fund, district dâk cess, and the like, are payable by the land-owner. If the land-revenue or any of the said cesses is payable by the tenant, the rate to which his rent may be enhanced shall be reduced by the amount so payable.

Suit for re-enhancement.

9. After a decree shall have been passed in accordance with section eight, no suit shall lie for re-enhancement of the rent until the expiration of five years from the date of such decree, unless—

(1.)—A general revision of settlement shall have taken place in the meantime;

(2.)—Or the quantity of land held by the tenant shall be ascertained to be greater than the quantity for which he has paid rent previously to institution of the suit;

(3.)—Or the productive power of the land shall have been increased by improvements of the description mentioned in section thirty-three effected at the sole expense of the land-owner.

2.—*Rent payable by tenant-at-will.*

Rent payable by tenant-at-will.

10. Every tenant-at-will shall pay such rent as may be agreed upon between him and the land-owner; or, if no such agreement has been made, such rent as was payable for the land in the last preceding year.

3.—*Abatement of Rent.*

Grounds of right to abatement.

11. Every tenant having a right of occupancy shall be entitled to claim abatement of the rent previously paid by him on either of the following grounds, and on no others:

(1).—That the area of the land has been diminished by diluvion or otherwise, or proved to be less than the quantity for which rent has been previously paid by him; or

(2).—That the productive powers of the land have been decreased by any cause beyond the control of the tenant.

4.—*Remission of Rent.*

When Court may allow remission from rent.

12. Notwithstanding anything contained in section ten or eleven, it shall be lawful for the Court, in making a decree for an arrear of rent, to allow such remission from the rent payable by any tenant as may appear equitable, if the area of the land in the occupation of such tenant be diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought or hail, or other calamity beyond the control of the tenant, to such an extent that the full amount of rent payable by such tenant cannot, in the opinion of the Court, be equitably decreed.

5.—*Rent in Kind.*

Commutation of rent in kind.

13. No commutation of rent in kind into rent in money shall take place without the consent of the land-owner; and no commutation of rent in money into rent in kind shall take place without the consent of both the land-owner and the tenant.

Division and appraisement of produce taken for rent.

14. Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a similar nature, requiring the presence of the person entitled to the rent and of the cultivator either personally or by their recognized agents, if either party shall neglect to be present at proper period, or if a dispute shall arise between the parties regarding such division, estimate or appraisement, either party may present an application to the Court requesting that a suitable person be deputed to make the division, estimate or appraisement.

Procedure in case of dispute.

15. On receiving such application, the Court shall issue a written notice to the

other party requiring him to attend on the date and at the place specified in the notice, and shall depute a suitable person before whom the division, estimate or appraisement shall be made. The award of such person in respect of the division, estimate or appraisement shall be final, unless within three months from the date thereof either party shall institute a suit in the Civil Court to set it aside.

PART IV.

Of Ejectment, Abandonment, Relinquishment, Sub-leases.

Ejectment.

Ejectment of tenants-at-will and tenants having right of occupancy.

16. Subject to the provision contained in sections sixteen, seventeen and eighteen, every tenant-at-will shall be liable to be ejected from the land in his occupancy, and every tenant having a right of occupancy, from whom an arrear of rent is due, shall be liable to be ejected from the land in respect of which the arrear is due.

Tenant-at-will not liable to ejectment without notice.

17. No tenant-at-will from whom no arrear of rent is due shall be ejected from the land in his occupancy, unless he shall have received notice of the land-owner's intention to eject him, and such notice shall have been recorded by the Patwarí, or a written notice put up in some conspicuous place in the village in which the land is situate, at the time fixed in the village administration paper for such notices to be given, or if no such time be so fixed, on or before the first day of May in any year after the passing of this Act.

Ejectment of tenant having a right of occupancy.

18. No tenant having a right of occupancy shall be ejected otherwise than in execution of a decree for ejectment, and such

decree shall not be made unless at the date of the decree, a decree against such tenant for an arrear of rent in respect of the land from which the land-owner desires to eject him shall have remained unsatisfied for fifteeen days, or upwards.

Time of ejectment.

19 No tenant shall, whether in execution of a decree or otherwise, be ejected from the land occupied by him, except at such time as may have been fixed in that behalf in the village administration paper; or, if no such time has been fixed, except between the first day of May and the fifteenth day of June in any year after the passing of this Act: Provided that, if while his rent is in arrear he has failed to cultivate the land for which the arrear is due, in accordance with the terms on which he holds it, he may be ejected therefrom at any time.

Compensation to ejected tenant for growing crops.

20. Any tenant ejected in accordance with the provisions of this Act, shall be entitled to receive from the land-owner the value of any growing crops or other ungathered products of the earth belonging to such tenant and being on the land at the time of such ejectment.

Loss of right of occupancy on ejectment.

21. If a tenant having a right of occupancy be ejected in accordance with the provisions of section seventeen from the land in which he possesses such right, he shall lose his right of occupancy in such land.

Abandonment.

Loss of right of occupancy on abandonment.

22. If a tenant having a right of occupancy abandon the land in his occupancy, he shall lose his right of occupancy in such land.

Omission both to cultivate and to pay rent or to make provision for both cultivation and payment of rent for twelve months, shall be held to be abandonment within the meaning of this section.

Abandonment what.

Relinquishment.

Relinquishment of land by tenant.

23. Every tenant shall continue liable for the rent of the land occupied by him, unless at the time fixed in that behalf in the village administration paper, or, if no such time be fixed, on or before the fifteenth day of May in any year after the passing of this Act, he shall give notice to the land-owner of his intention to relinquish such land, or unless such land shall have been let to any other person by the land-owner.

Sub-leases.

Right to sub-let.

24. Any tenant having a right of occupancy may sub-let, or otherwise temporarily provide for the cultivation of his land, whenever for any sufficient reason he is unable to cultivate it himself.

Loss of right of occupancy by non-receipt of produce.

25. Provided that the tenant shall lose his right of occupancy, if it appear that, for a period of more than three years, neither the tenant nor his heir has received any portion of the prodnce of the land.

PART V.

OF CERTAIN DISABILITIES WHICH MAY BE REMOVED BY PAYMENT OF COMPENSATION.

Right of land-owner to resume possession of leased land required for his own cultivation.

26. Any land-owner proving to the satisfaction of the Court that the quantity of land in his possession is insufficient for the sup-

port of himself and his household, may, on payment of the market value of the land, be entitled to require a surrender of as much of the land of any tenant having a right of occupancy subordinate to him (the land-owner) as shall, when added to the land already in the land-owner's possession, be sufficient in the opinion of the Court for the support of himself and his household: Provided that, at the option of the tenant, the land-owner shall be required either to take at the market-value such additional quantity only, or the whole of the land occupied by the tenant.

Right of tenant to alienate tenure.

27. Any tenant having a right of occupancy in any land, and having an heir entitled to succeed to such land, shall have power, subject to any restrictions imposed on the disposition of immoveable property generally by law or local usage, to alienate his tenure on payment to the land-owner of a sum of ten per cent. of the market value: Provided that in every such case the tenure shall be offered for sale in the first instance to the land-owner at the market value less ten per centum, and shall not be sold to any other person unless the land-owner shall for the space of one month refuse or neglect to complete the purchase.

Land-owner's right of preemption.

Right of tenant's alienee.

Every person to whom a tenure shall be alienated under this section, shall be deemed to have the same rights and to be subject to the same liabilties as the tenant making the alienation.

Removal of disability to plant or cut trees.

28. Any tenant having a right of occupancy, but disentitled to plant or cut down, remove and dispose of trees or timber planted by himself or of spontaneous

growth, on the land in his occupation, shall, on tendering to the land-owner such compensation as the Court shall think reasonable, become entitled to plant and cut down, remove and dispose of any such trees or timber as aforesaid: Provided that nothing herein contained shall be deemed to authorize the tenant to plant trees so as to diminish the amount of rent which he may from time to time be liable to pay in kind.

PART VI.

OF COMPENSATION FOR TENANTS' IMPROVEMENTS.

Rights as to improvements.

29. The land-owner may make improvements on the land in the occupation of any tenant; and any tenant may with the previous permission of the land-owner make improvements on such land: Provided that the land-owner shall be deemed to have given such permission in every case where: being cognizant of the improvements while they were being made, he did not expressly prohibit them.

Enforcement of tenant's right to require or make improvements.

30. Any tenant having a right of occupancy may require the land-owner either to make the improvements or to give the tenant permission to make them. If the land-owner refuse to make or neglect to commence and within a reasonable time to complete the improvements required of him, or to give the tenant permission to make them, the tenant may, on satisfying the Court that such improvements or any of them are or is desirable, obtain an order authorizing him to effect them or it itself.

Tenant's right to compensation for improvements.

31. If any tenant shall have made improvements on the land in his occupation in accordance with the conditions mentioned in sections twenty-nine and thirty, and if the land-owner ejects or brings

a suit to eject or to enhance the rent of such tenant, the tenant shall be entitled to compensation for the outlay, in money or labour or both, in making such improvements which shall have been effected by him, within twenty years next before such ejectment or the institution of such suit as aforesaid.

Compensation how made.

32. Such compensation shall, in case the tenant be ejected or the land-owner sue to eject him, be made by payment in money; and in case the land-owner sue to enhance the rent within twenty years after the date of effecting any such improvement, the Court in making a decree in his favour shall not take into consideration the increase of the value of the land which may reasonably be attributed to such improvement: Provided that, in estimating the amount of the compensation, regard shall be had to any benefit derived by the tenant from his having been allowed to hold at a rate of rent more favourable than the rate at which he otherwise would have held.

"Improvements," defined.

33. The word "improvements," as used in sections twenty-nine, thirty, thirty-one and thirty-two, means works by which the annual letting value of the land has been, and, at the time of demanding compensation, continues to be, increased, and shall comprise—

1*st.*—The construction of wells and of works for the storage of water, for applying water for irrigation, for drainage, and for protection against floods; the reclaiming and clearing of waste lands and jungles; and other works of a like nature;

2*nd.*—The renewal or re-construction of any of the foregoing works, or such alterations therein or additions thereto as are not required for main-

taining the same, and which increase durably their value.

PART VII.

PROCEDURE.

Revenue Courts.

34. For the purposes of this Act, the Revenue Courts shall be the several Courts mentioned in section four of Act No. XIX of 1865 (*the Panjab Courts' Act*, 1865), holding sittings on the revenue side, other than Courts of Small Causes ; but instead of the Chief Court of the Panjab, the final Court of appeal shall be the Court of the Financial Commissioner of the Panjab. The Court of the Settlement Officer shall also for the purposes of this Act be deemed to be a Revenue Court. All the provisions of the Act No. XIX of 1865 (*to define the jurisdiction of the Courts of Judicature of the Panjab and its dependencies*) and of Act No. XXVII of 1867 (*to empower Deputy Commissioners in the Central Provinces, the Panjab, Oudh and the Jhánsí Division to distribute the business in subordinate Courts*) shall, so far as they are applicable, apply to the Revenue Courts.

Revenue Court to hear claims under certain sections,

35. Claims under sections eight, nine, thirteen, fourteen, fifteen, twenty-six, twenty-seven and twenty-eight shall, unless otherwise provided for, be heard in the Revenue Courts. The rules relating to civil procedure for the time being in force in the Panjab shall, so far as they are applicable, apply to all suits brought before the Revenue Courts under this Act.

THE FIRST DEBATE IN THE LEGISLATIVE COUNCIL.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 17th January 1868.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.

His Honor the Lieutenant Governor of Bengal.

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble G. Noble Taylor.

The Right Hon'ble W. N. Massey.

The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I

The Hon'ble Sir W. Muir, K. C. S. I.

The Hon'ble E. L. Brandreth.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. Skinner.

The Hon'ble Steuart Gladstone.

The Hon'ble Khwája 'Abd-ul-ghani.

The Hon'ble F. R. Cockerell.

PANJAB TENANCY BILL.

The Hon'ble MR. BRANDRETH introduced the Bill to define and amend the law relating to the tenancy of land in the Panjab, and moved that it be referred to a Select Committee with instructions to report in six weeks. It would not be necessary for him to say much about the reasons for introducing this Bill, by way of preface, before he proceeded to consider the particular contents of the Bill itself. Bengal and the North-Western Provinces had their Acts, which provide for the fixing of rents and for the recognition of rights of occupancy among tenants. A Bill on the same subject for the Province of Oudh had recently been introduced into this Council. There had been as yet no legislative enactment for the Province of the Panjab. The object of this Bill, therefore, was to make provision regarding these matters for the Panjab, in accordance with the special requirements and peculiar circumstances of that Province. Whatever appeared applicable to the requirements of the Panjab had been taken from the North-Western Provinces' Acts and the Oudh Bill, but it would be perceived, notwithstanding, that there were very material differences in other matters between the provisions that had been made for these Provinces and what was proposed for the Panjab.

In rendering his account of this Bill, he would not trouble the Council by entering into every detail. He intended to speak only of those provisions of the Bill which appeared to him more especially to require explanation, and particularly of those provisions which differed most from what had been enacted for other Provinces. He was afraid, however, that, in speaking of those provisions, he should have to occupy the time of the Council considerably; but he trusted the great importance of the subject to so large a part of the empire as the Panjab, and the great interest it had recently excited in that Province, would be deemed a sufficient excuse for doing so. He passed over the first Part, which was preliminary only, and came to the second Part, which treated of the occupancy of tenants.

This subject of the occupancy-rights of tenants was no doubt full of difficulty, but the difficulty was almost entirely of their own creation, from their settlement officers and Civil Courts having previously altogether ignored the rights of the land-owners. The proceedings, however, of the Settlement Commissioner, Mr. Prinsep, rendered it impossible to ignore those rights any longer. The result of Mr. Prinsep's enquiries with reference to some ten thousand cases in some of the most important districts in the Panjab, if correct, was that some three-fourths of those tenants who were formerly supposed to have rights of occupancy, were properly mere tenants-at-will. Colonel Lake, the late Financial Commissioner, who visited those districts and tested some of Mr. Prinsep's proceedings, by no means endorsed the whole of Mr. Prinsep's conclusions; still it could not be possibly said that these conclusions were equally without foundation in regard to all classes of tenants. It was the duty of settlement officers in the Panjab, besides measuring the land and fixing the assessment, to call upon the people, while their minds were calm and before disputes had actually arisen, to state what the village customs were upon all points likely to produce disputes among them. These customs were then recorded in what was termed the *wájib-ul-'arz*, or village administration paper, and this document was always regarded by the Courts as containing the most valuable evidence with reference to all matters of which it treated. By the help of this document, disputes of a more complicated nature than disputes relating to the rights of occupancy of tenants had frequently been satisfactorily decided. For instance, many matters connected with inheritance and with the disposition of landed property in villages were regulated, not by Hindu or Muhammadan law, but by local customs of a radically different nature, which were recorded in the administration paper; and, in regard to all such customs, the administration paper was usually received as valid evidence. Unfortunately the same pains were not taken to ascertain the village customs in regard to the rights of occupancy of tenants. No doubt the land-owners themselves were backward in urging their claims when the settlements were first made. They were probably for the most part not in immediate want of the land held by their tenants, and they were not aware how valuable much of the land would become under the operation of a moderate assessment. His Excellency the President was aware, MR. BRANDRETH found, at an early period when he held the office of Chief Commissioner of the Panjab that, by the custom of the Panjab, tenants could not acquire rights of occupancy by mere lapse of time; and MR. BRANDRETH found that, in 1855, some instructions were issued by His Excellency for the guidance of settlement officers, to the effect that they ought to be aware that it was the nature, quite as much as the length, of occupancy that entitled a cultivator to privileges. Unfortunately the instructions thus issued by His Excellency did not appear to have met with the attention they deserved. The Panjab was what was called a Non-Regulation Province; still it was generally

understood that, as far as practicable, the spirit at least of the Rules and Regulations in force in the North-Western Provinces and Bengal should be followed. Now, according to those Rules, it would appear that cultivators could not ordinarily be ejected so long as they paid the rates fixed on their fields. In the "Directions for Settlement Officers in the North-Western Provinces," which was the only guide-book which their first settlement officers in the Panjab possessed, it was expressly laid down that "those cultivators who have for a course of years occupied the same field at the same or at equitable rates, are held to possess the right of continued occupancy, while those whose tenure is not similarly sanctioned are considered tenants-at-will." In accordance with the spirit of these instructions, the Panjab settlement officers appeared to have recorded all tenants who had cultivated their lands continuously for certain periods, as possessing rights of occupancy, without at all regarding any other circumstances or conditions connected with their occupancy. The Civil Courts also had subsequently for the most part, except with regard to a limited class of cases, acted on the same principles.

With the view of ascertaining what power was formerly exercised by land-owners in the Panjab, in regard to the ejectment of tenants, the Local Government recently addressed some enquiries on the subject, not only to its own officers, but to persons also who had held office under the Sikh Government, or who were otherwise likely to be well acquainted with the extent to which the rights of land-owners were recognized under the Government. MR. BRANDRETH had there a printed abstract of the replies to some of these enquiries. Unfortunately this evidence lost much of its value from its not sufficiently appearing to what parts of the country and to what classes of tenant it related, from what particular instances it had been obtained, and from its not being given with sufficient details and particulars to show that the subject of the enquiries had been fully understood. Thus, while from many of the replies it would appear that tenants of long standing were never evicted, from other replies again it might be gathered that tenants were evicted at the sole pleasure of the land-owners, without any regard whatever to length of occupancy or other circumstances. From the whole of this evidence, however, as well as from other evidence which he had there also, and which was previously collected under the orders of the Financial Commissioner, he thought it might be inferred on the one hand that, in some parts of the country at all events, if not over the greater part of the Panjab, the *kardars* or officers of Government treated both land-owners and tenants alike, allowed the so-called land-owners no share at all in the rent paid by the tenants, and did not permit them to interfere in any way whatever with the tenants. Thus, the possession of such tenants appeared to have been what was called *adverse* possesion. Again, there were tenants who, from having sunk wells or improved the land in any other expensive manner, and from having shared in profits and losses with the land-owners or from having gone forth to fight the battles of their village with other villages, and in other ways also, were considered to have rights of occupancy: on the other hand he thought it might be inferred from the same evidence that, in other parts of the country, there were land-owners of more power and influence, who either held leases direct from the Sikh Government, or, if the rent was collected in kind, appropriated to themselves a considerable portion of what was paid by the tenants, who, there was reason to believe, did what they pleased with the land cultivated by their tenants, so long as they provided for its cultivation, or otherwise satisfied the claim of the Government. Tenants who were thus liable to be

ejected were no doubt erroneously entered in the settlement records as having rights of occupancy on account of mere length of possession. He thought it might certainly be inferred from the evidence he had there, both that rights of occupancy under certain circumstances were acquired, independently of length of possession, while, under other circumstances, such rights should not be held to have accrued by mere length of occupancy.

They had to determine how this important question should now be dealt with. The claims of the land-owners had no doubt in many instances been in abeyance during the whole period of the Sikh Rule and up to the present time. Were these latent claims to be now revived, and, if so, to what extent? Some officers maintained that, even though some errors might have been committed in the preparation of the settlement records, these records were yet a sort of guarantee by the land-owners of the rights of the tenants; that the decisions of the Courts had been ever since almost invariably in accordance with the settlement records; that the relationship between land-owners and tenants had become settled, and engagements had been entered into in accordance with these records, and that any attempt to disturb them, after they had been acted on during so long a course of years, would be very impolitic and detrimental to the best interests of the village communities. Other officers again appeared to think that, if certain persons were admitted, even by the tenants themselves who cultivated the land to be the owners of the land, it should be presumed that they had a complete title to the land until the contrary was proved, and that the burthen of proof in this case should rest on the tenants who denied the completeness of the title. There appeared to be some degree of truth in both these views: the object of tihis part of the Bill was to mediate between these extreme opinions, or rather, it was not so much an attempt to settle anything definitely, as to open a way for the claims of the land-owners being dealt with by the settlement officers or by the Civil Courts. No rights that were in abeyance during the Sikh Rule would be recognised by this Bill. Land-owners, however, would be permitted to revive claims to the land occupied by tenants, which they had hitherto been prevented bringing from the wrong notions that had been entertained during British Rule of the merits of their claims; but subject to this condition, that those tenants who had hitherto been considered as tenants having rights of occupancy, should be presumed to possess such rights until the contrary was proved, and that the burthen of proof should rest on the land-owners who denied that the tenants had rights of occupancy. It would be observed—he referred to section 4—that only on one condition had rights of occupancy been absolutely conferred on tenants—the condition of their having formerly possessed proprietary rights in the lands occupied by them. He believed it would nowhere be denied that such tenants had rights of occupancy. This class of tenants, however, was by no means a numerous class. It would no doubt be very useful for the guidance of the Courts and of the people, if other conditions of occupancy could also be detailed; if it could be positively laid down that, under certain circumstances, tenants acquired a right of occupancy; or that, under certain other circumstances, tenants never could acquire rights of occupancy. Mr. Prinsep, he believed, considered that by village custom several classes of tenants had no rights of occupancy. Among Mr. Prinsep's conclusions on this subject, he found the following enumerated in a memorandum which he had there by the late Financial Commissioner, Colonel Lake—*1st*, that no shareholder in a common property had a right to occupy, as hereditary cultivator, any portion of that common holding; *2nd*, that no shareholder cultivating the land of another shareholder of the same estate, could be considered a hereditary cultivator; *3rd*, that non-resident tenants had no right

to a privileged occupancy; 4*th*, that village servants had no right to occupy as hereditary cultivators. It was to this first class of tenants, namely, those tenants who cultivated lands in which they had also joint proprietary rights with others who did not cultivate, that he (MR. BRANDRETH) alluded, when he said that the decisions of the Courts in regard to one class of cases had not been in accordance with the settlement records. It became evident in most cases of dispute about the division of the common land of a village, that none of the co-sharers had by the custom of the village any right to the hereditary occupancy of such land; the Courts therefore could not do otherwise than decide such disputes in accordance with village custom: but one of the Native members of the Lahore Committee to which he referred when he moved for leave to introduce this Bill, pointed out that there might be an exception even to this general custom; as, for instance, when a man who had formerly been a mere tenant, afterwards acquired a proprietary share in the land cultivated by him. Under such circumstances, this gentleman did not consider that the tenant should lose his right of occupancy, and there might be other exceptions also. If, therefore, this class of tenants was not universally debarred from acquiring rights of occupancy, still less was it probable that such would be the case with reference to the remaining classes enumerated by Mr. Prinsep, or, even if his conclusions were correct in regard to the particular districts over which his recent enquiries had extended, it would not be safe to incorporate them in an Act applicable to the whole of the Panjab. It was probable that village custom in one part of the country would be found to differ very materially from village custom in another part. He believed Mr. Prinsep would be better satisfied with the Bill, if the different classes of tenants enumerated by him, even if they should not be held to be absolutely debarred from ever acquiring proprietary rights, were specially excluded from any presumption being raised in their favour by the fifth section of the Bill; But in the present state of his information he could not agree to this. The number of tenants with rights of occupancy in the Panjab might perhaps be estimated somewhat vaguely at about 3,00,000; the number of tenants-at-will at about 6,00,000, and the number of proprietary cultivators at about 12,00,000. Some statistics on the subject were published in 1860; they were not supposed, however, to be very accurate. What number of tenants hitherto supposed to have rights of occupancy would become liable to be ejected from their holdings if the Bill was passed, he could not pretend to say; but, as the whole burthen of proving they had not such rights was thrown on the land-owners, perhaps the number would not be very great. On the other hand, those land-owners who clearly had rights of ejectment, and complained of having been deprived of them under British Rule, would, he hoped, have no great difficulty in re-establishing their rights in the way that would be open to them if this Bill became law. The opening of the Courts to such suits would also act as a safety-valve for letting out any real discontent that might exist, but he trusted that too much outside influence would not be brought to bear on the land-owners; that they would not be urged to flood the Courts with suits by over-zealous settlement officers. What Colonel Lake said in the memorandum to which he had already referred was worthy of notice, as a caution against too much zeal in dealing with this tenant-right question, namely, that he had observed throughout, after visiting the districts over which Mr. Prinsep's operations had extended, that European officers appeared to be more interested in the question than the people themselves. It might be said, perhaps, than this Bill left the question of occupancy-rights in a state of apparent uncertainty. He did not see how it could be otherwise, unless, as in Act X of 1859, a tenant were allowed to claim a right of occupancy after cultivating his

land for a certain period; but the whole object of this part of the Bill was to prevent any title being acquired in that way. The tenants ought to know of themselves perfectly well whether or not they were really entitled to rights of occupancy; or two or three suits here and there would settle the matter; or the general enquiries that had recently been made by their present settlement officers ought to make it sufficiently clear in most cases what classes of tenants had and what classes of tenants had not, rights of occupancy in those districts that were under settlement. There was nothing in this Bill to prevent the Government, if it should think it worth while, making such enquiries in every district. It might be observed, also, that this Bill left the rights of occupancy no more uncertain, than inheritance-rights, life interests, many other important rights in villages, with reference to which custom varied greatly, were left uncertain as regarded the passing of any Act for the purpose of settling them. It was assumed in the Punjab Civil Code that the village administration paper would contain sufficient information for the guidance of the Courts in regard to all matters relative to village custom which it was not expedient to provide for by positive enactment. This Bill took away nothing from the tenant that he originally had, and gave him nothing that he originally had not: all it did was to prevent these seventeen years that had elapsed since the annexation of the Panjab, during which the tenant's occupancy had not been questioned, and the long course of the decisions of the Courts, from conclusively telling against or being used as precedents against the claims of the land-owner, if he had really a good claim. Mr. Prinsep had another plan for settling all questions regarding rights of occupancy—or rather, as it seemed to him, it was a plan for taking away all rights of occupancy; it was consequently a plan that he could not approve of. Mr. Prinsep did not let the matter alone until a disagreement arose between the parties which either party wished to have settled; but he compelled a dispute between them by insisting on a reply on the spot to his enquiries regarding each individual tenant, as to whether the land-owner could turn out the tenant or not. The land-owner usually replied that he could turn him out, and the tenant that he could not; and then, in accordance with Mr. Prinsep's account of the procedure, quoted by Colonel Lake, the question at issue was decided by a village panchayat, regarding which "it was a strict rule to select the members at random from the crowd at the time (not before) of the actual sitting for enquiring into the status of the tenants." Then, he gathered from another paper, Mr. Prinsep's proposal was that, if these awards of the panchayats were not contested within one year by the institution of a civil suit, they should hold good for ever. His Excellency the President, when holding the office of Chief Commissioner in the Panjab, directed that all settlement officers should be invested with the powers of Civil Judges. He did this, as MR. BRANDRETH had always understood, to ensure a finality being given to their decisions, and to put a stop altogether to summary decisions which could be contested in other Courts; and in accordance with what he had supposed to be His Excellency's views on the subject, settlement officers in the Panjab to this day always exercised the powers of Civil Courts. There was a general Act to provide for the limitation of suits, No. XIV of 1859, which was not yet in force in the Panjab, but was to be applicable to suits instituted after some future date; he did not now remember the exact date. That Act no doubt contained a section which provided that settlement awards must be contested within three years. If such awards as Mr. Prinsep's were contrary to the settlement procedure in force in the Panjab, then that particular section would not apply to them; but if it did apply, then it was a question whether it ought not to be repealed. It must be remembered that the object of Mr. Prinsep's system of awards was to set aside the entries of

former settlements. As pointed out by Colonel Lake, under the present Panjab law, a formal entry in the settlement record must be called in question by a regular suit within twelve years from the date of the final English report of the settlement officer, and any claim to set it aside after that date could not be entertained. As regarded some settlements, this period had already passed, and twelve years, he believed, all but a few months, had elapsed since these settlements which Mr. Prinsep was now revising were made. Up to the present time, therefore, it had been required of the land-owner to prove that the former settlement record was incorrect, if he wished it altered; and now to turn the scale, when only a few months of the twelve years remained, as Mr. Prinsep proposed, and throw on the tenant the burthen of proving that the same record was correct would, it appeared to him, be very unfair to the tenant. He certainly thought this twelve years' limitation rule ought to be repealed altogether; but such a repeal ought to be made the subject of separate legislation, as the rule applied to many other matters besides tenants' rights of occupancy. Under the circumstances he had stated, however, he could not conceive anything more unfair towards the tenants than Mr. Prinsep's plan would be, if he understood it aright. When tenants, who were registered at a former settlement as having rights of occupancy, were now summarily declared not to have such right—if they had no direct quarrels with their land-owner, and no present expectation of being turned out of their lands, as was doubtless the case with the great majority of them—they might be quite sure that they never would, nor could it be reasonably expected that they should, go into the Civil Courts within a year at the present very high cost of suits, in the hope of having the settlement awards against them set aside, especially when in most cases, Mr. Prinsep had taken away all motive for immediate action on the part of the tenants, by requiring the land-owners to give them leases for periods generally extending much beyond the period of one year, or even three years, within whichever period it might be proposed that the tenants must bring regular suits if they wished the settlement awards to be set aside. Mr. Prinsep was doubtless entitled to credit for insisting on the recognition of all rights claimed by the land-owners, which had hitherto from mistaken notions not been recognized; but in that plan he seemed to Mr. Brandreth to go into the other extreme of being unjust to the tenants.

The third Part of the Bill related to rent. It would be seen, with regard to the enhacement of rent, that, by section 8 of the Bill, the rent was not to be enhanced beyond certain limits there laid down. These limits were no doubt somewhat arbitrary; but unless some limits were fixed, the rights of occupancy that had been provided for in the former part of the Bill might have no meaning. The rent might be enhanced to within twenty-five per cent. of the rack-rent of the land, if the tenant had paid no rents hitherto to the land-owner, or paid none previously to the regular settlement: it might be enhanced to within fifteen per cent. of the rack-rent if the land-owner previously enjoyed any share of the rent. It might be asked why, if the so-called land-owners got no share formerly in the rent of the land cultivated by the so-called tenants, the land-owners were now held to be entitled to a share in the rent? and he would give this explanation of the matter. In those parts of the country where the land-owners got no share in the rent, the reason of this was that the Sikh Government took the whole net produce of the land from every cultivator, whether proprietary or non-proprietary, and thus left nothing which the land-owner could take; and that, in the first instance, when the country became subject to the British Government, no distinction was made between land-

owner and tenant, as regarded the matter of assessment, where none had existed before: nor did the land-owners themselves, so far as he was aware, make any claim, in the early periods of our Rule, to rent under these circumstances from the tenants. The British Government only professed to take half the net produce of the land as land-revenue, and therefore, afterwards, it came to be considered, and he had no doubt justly considered, that these cultivators, who admitted themselves to be only tenants, who entered into no engagement with the Government for the payment of the land-revenue, who had no concern with the management of the village, and who had no transferable property in the land cultivated by them, ought not be allowed to appropriate the whole of the remaining portion of the net produce, but that some share in this portion should be given to the acknowledged land-owners. The maximum proportion of the net produce claimable from this class of tenants, however, had been fixed at ten per cent. less than the maximum claimable from other tenants, who had been in the habit of always paying rent at a higher rate than that of the land-revenue. All other distinctions which it might be necessary to draw had been left to the discretion of the Courts in cases of dispute; nor was it, he thought, a discretion which they would find any difficulty in exercising. After a good deal of experience in such matters, he should say that the main points of disagreement between the land-owner and tenant were that the tenant objected to being turned out of his holding, and that the land-owner, if he had been in the habit of taking his rent in kind, objected to having that rent converted into a money rent; but it was a matter of comparative indifference to the tenant whether he had to pay a little more or a little less rent, especially if it was a money rent. Some hundreds of rent-claims, he understood, had been settled with the utmost ease, and to the mutual satisfaction of the parties, by the settlement officers employed under Mr. Prinsep's orders. It had been provided further on, in section 13, that no commutation of rent in kind into rent in money should in future take place without the consent of the land-owner. Such commutations had ceased to be made, he believed, for some years; but they had taken place to a considerable extent during the early part of our administration of the Panjab. These unquestionably were the cause of much ill-feeling, and in many cases utterly destroyed that common interest and kindly relation which formerly subsisted between land-owners and tenants. This was another instance of the evil produced by too closely following what was done in the North-Western Provinces, without sufficiently considering whether it would suit the Panjab. The present Lieutenant Governor of the Panjab he believed—than whom no one probably knew better what the general feeling of the country was in regard to such matters,—entirely disapproved of any compulsory alteration in the mode of paying rent. This payment in kind, *ádhádána* system as it was often called, from the gross produce being equally divided between the land-owner and tenant, appeared to correspond both in name and nature to the metayer system of Italy and some other European countries. Whether the metayer of Italy could claim of right a conversion of his produce rent into a cash rent, he was not aware, but he believed there was hardly any difference of opinion now in the Panjab that such conversion should not be allowed merely on the application of the tenant against the wishes of the land-owner.

The few next sections in the Bill, included under Part IV, treated of ejectment, abandonment, relinquishment and sub-leases, but he did not think he need detain the Council by any remarks on these sections, as their purport was perhaps sufficiently obvious without explanation.

The fifth Part of the Bill related to certain disabilities which might be removed by payment of compensation. There were, no doubt, some novelties in the way of legislation in this part of the Bill. The 26th section, giving the land-owner the power to appropriate the land of any tenant having a right of occupancy, if the land in his own possession was not sufficient for the support both of himself and his household, had been adopted at the suggestion of the Lahore Committee. He had adopted their suggestion with some hesitation. It might be asked why, if after all the facilities which had been given to the land-owner by a former part of this Bill for disproving the right of occupancy claimed by the tenant, the land-owner was unable to disprove it and the tenant's right of occupancy was fully recognized—why, under such circumstances, should the tenant be turned out of his holding? As regarded the market-price of the land, which it was proposed that the tenant should receive, it might be said that sales of land in most parts of the country were so very uncommon, and the pecuniary value of land was so little understood, that the market-price would be no equivalent for what the land was worth to the tenant. The Committee, however, thought that there ought to be some such provision as that made in this section. The Native members of the Committee in particular were unanimously in favour of such a provision. They maintained, he remembered, that it was quite opposed to the sense of the country, and to all their ideas of right that, when the land had become so sub-divided that there was no longer room for both land-owners and tenants to cultivate, the land-owners to whom the land belonged should have to go into perpetual exile, while the tenants remained in possession. That was a result, they thought, that ought never to be permitted; and though the tenants might have some right of occupancy, which ought not to be interfered with unless upon such an urgent necessity as that of the land cultivated by the land-owners themselves not being sufficient for their support, yet, when such a necessity was shown, the tenants would be more than sufficiently compensated for having to give up their land if its market-value were paid to them.

The next section, 27, regarding the right of tenants to alienate, contained a provision intended more especially for the benefit of the tenant. The tenant might have hitherto paid no rent other than the Government revenue, his interest in the land cultivated by him might be much greater than that of the so-called land-owner, yet by existing custom he was so bound to the land that, whatever his necessity might be, he had no right to transfer it to another; his simple right was to till his field himself, and if he attempted to do anything else, his right of occupancy ceased. By this section, under certain circumstances, if there was no immediate prospect of the land lapsing to the land-owner, the tenant would be allowed to alienate on payment of ten per cent. of the value to the land-owner.

The effect of the two sections of which he had last been speaking might be in some slight degree to diminish the evil of the excessive sub-division of land which had already taken place in many villages, and which was continually increasing under the peaceful rule of the British Government. Sub-divisions could not take place to the same extent under the Sikh administration, for the simple reason that so much smaller a share of the produce was left to the cultivators than they enjoyed under our lighter assessment; but it was evident that the people might become quite as poor by too minute sub-division under light assessments, as they would under heavy assessment, if the land were not so minutely sub-divided. Some of their settlement officers, in their reports, had re-

cently remarked on the pressure of the assessment caused by there being too many mouths to feed, and from the land not being sufficient to support the cultivators in comfort. A land-owner had no power whatever, under existing law, to restrict the sub-division of an ancestral estate after his death among his heirs-at law, however numerous they might be. A few years ago the holders of jágírs, or large revenue-free estates agreed, he believed, very generally to a proposal of the Supreme Government that such estate should devolve upon the eldest son only. He had reason for thinking that, in some parts of the country, the land-owners would readily agree to any reasonable proposal for preventing future excessive sub-division in small revenue-paying estates. He should like to see power given to the Lieutenant Governor to restrict further sub-division in any village where the properties were already too small, and where he considered that such restrictions would not be opposed to the feelings of the people. A provision to that effect, however, would be beyond the scope of the present Bill, in which he professed to deal with the relations of land-owners and tenants towards each other.

The 28th section of the Bill allowed the tenant with a right of occupancy to plant and cut down trees, on agreeing to pay reasonable compensation to the land-owner. A tenant who paid in money was at liberty to sow what crops he pleased on his land; but a tree, according to the Panjab Revenue Manual, which he believed correctly described the existing custom in many parts of the country, he could not cut down unless he required it for domestic use. He had consequently no inducement to plant trees, and considering the scarcity and increasing price of wood in many parts of the country, it certainly seemed desirable that he should be able to get rid of this disability on payment of compensation to the land-owner.

The sixth Part of the Bill treated of compensation for tenants' improvements. The clear and comprehensive description of the word "improvements" in section 33 had been adopted from the Oudh Bill. That Bill further, it appeared, allowed the tenant to make any improvement he pleased without reference to the land-lord. Such a provision, however, would be opposed to the relation in this matter in which the tenant was considered to stand with reference to the land-owner in the Panjab. It had therefore been provided in this Bill that the tenant-at-will should not receive compensation for improvements, unless they had been made with the permission of the land-owner; nor should the tenant having a right of occupancy, unless the improvements had been made, either with the permission of the land-owner, or unless the tenant had first given the land-owner the option of making them.

He had now noticed all the provisions of the Bill which appeared to him more especially to require explanation. He might have overlooked some matters which might provoke criticism; but he had no doubt the Council would think that he had said quite enough for one occasion, even if he had not already taxed its patience too far, and that all minor details at least had much better be dealt with by the Select Committee, should he obtain permission to refer this Bill for that purpose. He had prepared this Bill to the best of his present knowledge, but he did not in the least bind himself to defend every line of it to the last. He was quite open to advice on the subject, and would gladly adopt any good

suggestions for the improvement of the Bill with which he might be favoured. The Settlement Commissioner, Mr. Prinsep, had promised some more papers; Mr. Roberts, the Financial Commissioner, was writing a report; above all, the Lieutenant Governor, SIR Donald McLeod, had not yet expressed his views upon the Bill. No one knew more about the Panjab than its present Lieutenant Governor, and he would doubtless direct attention to those matters in respect of which the Bill might require amendment. If MR. BRANDRETH had waited until the Lieutenant Governor had seen his proposals, he might have produced a better Bill in the first instance; but then he should not have been able to publish it in sufficient time before the conclusion of this session for its being well considered by the many experienced officers in the Panjab, from some of whom he hoped to receive valuable suggestions. He would not think of asking the Council to pass the Bill until he learned the views of the Lieutenant Governor with regard to it, nor until he had seen the reports promised by Mr. Roberts and Mr. Prinsep, nor until the Bill had been published for a sufficient time to allow all those who were interested in the subject treated of to express their opinions. He trusted the Council would now allow this Bill to be referred to a Select Committee.

HIS HONOUR THE LIEUTENANT GOVERNOR said that, in the absence of all the papers on the subject of this Bill—both those containing the correspondence which had already taken place in the Panjab, and those which were expected to be received—it was clear that the Council was not in a position to form any accurate opinion in regard to the Bill which was now introduced. Some of the provisions of the Bill were, he thought, open to question; and there was one, especially, regarding which he should like to receive an explanation from the Hon'ble Mover. HIS HONOUR understood the Bill to be founded practically on the admission that mistakes had been made and wrong done on the occasion of the original settlement in the Panjab; but that it was considered—looking to all the circumstances of the case, to the fact that tenants had enjoyed rights which were so erroneously bestowed on them now for a long series of years, and also, as stated by Mr. Brandreth, that, to a certain extent, land-owners were themselves remiss at that time in following up their claims,—that it was on the whole fair that the onus of proof should now be put on land-owners to show that tenants who were in the enjoyment of rights ought not to continue to enjoy them. That was the principle on which HIS HONOUR understood the fifth section to be based. But, after that, there came the sixth section, which appeared to him to be somewhat strange. After saying that every tenant whose name appeared on the records of a regular settlement sanctioned by the Local Government, as having a right of occupancy in land which he had continuously occupied from the date of entering his name in such settlement, should be presumed to have a right of occupancy in the land so occupied, section 6 went on to say that any tenant who was not recorded as having right of occupancy should, if there was reason for believing that he would have been so recorded if he had preferred his claim at the settlement, have the same rights and be subject to the same liabilities as other tenants who were recorded in the same settlement as having rights of occupancy. That struck HIS HONOUR at first sight as a strange provision; because the Bill, as he understood it, starting with the admission that such rights were in many instances wrongly given by the settlement officers, provided in section 6 that any tenants who had not been recorded as having rights of occupancy, but who, if they had claimed such rights at the time of settlement, would have been so recorded under the erroneous view

which then prevailed, should now be considered to have been recorded as possessing such rights. HIS HONOUR could not understand the justice of a provision of that sort. It would required careful consideration before the Bill was passed.

Section 12 appeared to have been taken from the Oudh Bill, and provided that, in an ordinary suit for arrears of rent, the Court might allow a diminution of rent under certain circumstances; as, for instance, if the tenant could show that the produce of the land had been diminished by drought or hail or other calamity beyond the control of the tenant. The Court might then make a decree for arrears, with such remission as it might think equitable. HIS HONOUR could not help doubting whether a provision of that sort was suited to an every-day transaction between a landlord and his tenant. Such a provision would, he thought, lead to much litigation, and it would also be very difficult for the Courts to decide whether a tenant had suffered from drought, hail, or any other calamity. HIS HONOUR could understand a provision of that sort being suitable to an extraordinary occasion, such as the famine in Orissa, when Government had, to a great extent, remitted the revenue on the condition that the landlords should themselves remit the rents of their tenants. But it seemed to HIS HONOUR doubtful whether a provision of that sort was applicable to ordinary times.

The Hon'ble Major General SIR H. M. DURAND said that, from the very immatured manner in which this Bill was introduced by its Hon'ble Mover, Mr. Brandreth, he wished it to be distinctly understood that his assent to its introduction in no way pledged him to support the Bill. The principles of a Bill were usually considered to be accepted when it was referred to a Committee; but in this instance his Hon'ble friend had brought the Bill before the Council with an avowal that he awaited reports from the Lieutenant Governor of the Panjab, from Mr. Roberts, Mr. Prinsep, and other functionaries, whose opinions on the Bill were more or less indispensable. That was an incomplete and somewhat unusual way of introducing a Bill of such importance; especially as there were many details in it which were open to much question and discussion. SIR H. DURAND would avoid now entering upon a consideration of various points which demanded attention, because, at the present stage, in which Mr. Brandreth merely launched the Bill, in a sort of tentative way, to court ventilation of the subject and general criticism from the Panjab and elsewhere, it was desirable to await fuller information, and he guarded himself against being in any degree pledged to the various principles involved in the Bill. Therefore, until they were in possession of what the Hon'ble Mover himself awaited the reception of, and until discussion could be based on the deliberate opinions of the functionaries to whom he had referred, SIR H. DURAND held himself entirely free from any implied pledge or concurrence with the principles or details of the Bill by a simple assent to its introduction.

The Hon'ble SIR WILLIAM MUIR was disappointed to learn, from what had fallen from his Hon'ble friend the Mover of this Bill, that it had not yet received the sanction or approval of the Panjab Government. He freely admitted that Mr. Brandreth himself was every way qualified by experience and acquaintance with the subject to take charge of the Bill; but it seemed to him that it was the province of the Local Government to originate such a measure. For the merits of the proposed law depended to a very great extent on points of local usage and right, of local history and administration, which

were familiar to those at the head of the Province, but must be imperfectly known to this Council. Further, it appeared to him to be an advantage that the responsibility of measures of this kind should as far as possible be thrown upon the Local Government. It was hardly possible for this Council to take the initiative in special enactments depending so entirely on the peculiar habits and circumstances of distant provinces. He therefore thought that this belonged to a class of measures for which local legislation was specially suitable; or, if the Local Government did not possess that power, then at the least that the Bill should be promoted by the Lieutenant Governor himself. He might notice another peculiarity on the present occasion which rendered this the more necessary; the subject of the Bill was one on which extreme opinions were liable to be held on both sides, and in point of fact extreme opinions, as might have been expected, were maintained on both sides in the Panjab. Those of his friend Mr. Edward Prinsep, the Settlement Commissioner, had been alluded to; and while he had a very high estimation of that officer's zeal and ability, it must be admitted that his views on the present topic had an extreme tinge. As already stated by Mr. Brandreth, Colonel Lake had found, on local enquiry, that far greater interest and intensity of feeling were displayed by the officers of Government on this matter than by the people themselves. These, as elsewhere, were indifferent on the subject; and, so long as their present rights were not actually touched by ejectment or other immediate ground of complaint, were content. Now, as had been explained by Mr. Brandreth, on the enquiries and measures of Mr. Prinsep, which had for their object a radical change in the former settlement, the present position of the ryots had been secured by leases which would prevent their being ousted for some time to come. There was a danger, therefore, that officers holding one class of views should assume an absence of complaint, really owing to indifference, to be a confirmation of the equity and justice of their principles. A danger of this kind being incident to enquiries prosecuted by officers holding decided views on either class of opinions on the present question, seemed to him an additional reason why the Government should have interposed its authority as moderator, and itself laid down the principles to be followed, and proposed such legislation as might be necessary.

The history of the rights in question was peculiar. Before our occupation of the Panjab, the respective positions of the proprietor and the tenant were vague and unsettled. The former seemed to have possessed no such thing as an absolute right of property in our sense of the term: he was liable to constant interference. And so also with the ryot: he had no very defined right; but in point of fact he was rarely interfered with, and the Committee referred to by Mr. Brandreth had given it as their opinion that, if now declared to be tenants-at-will, this class would be absolutely worse off than they were under the Sikh Government. Then, again, there were large classes of cultivators, between whom and the proprietors it was difficult to draw any broad practical distinction: the position and rights of the one seemed to merge very much into those of the other; for the cultivator paid no rent in our sense of the word, but only the share of the revenue demand of Government which fell upon his holding; his privileges and profits being in this respect very much, the same as those of the proprietors. Now this class had special claims on our consideration.

Such being the vague and undefined position of the interests and rights in the soil, our first settlement went far to fix and to create a title in the land. Its effect was to substitute for a vague and uncertain position a definite and legal right. The action of the administration and of the Courts of law during the

last fifteen or twenty years had been also to strengthen the system of rights so recognized, and to create a just expectation of their permanence.

Such being the case, he fully approved the principle of this Bill, which took that settlement as the basis of rights in the Panjab, but at the same time afforded fair opportunity of remedying any patent injustice which might have been committed. He did not, as his Hon'ble friend the Lieutenant Governor, read the Bill as based on the assumption that the original settlement was founded on a great misconception, which it was the object of the Bill to remedy. On the contrary, he looked on the Bill as establishing and confirming all rights recognized by the settlement, but with the reserve of power to question the decisions of that settlement where shown to have been clearly opposed to any well-formed usage or right. The settlement might have been right, or it might have been wrong, in its general principles and assumptions; that was not the question. The question was whether it did not supervene upon a vague and uncertain state of things, and whether, so coming and having been so long enforced as the universal standard of landed titles, it did not supply a basis of right which should now be supported, excepting where in individual cases it might be shown to have done injustice.

With these general remarks, SIR WILLIAM MUIR would now beg permission to make some observations on certain provisions in the Bill. As Sir H. Durand had said, the details of the Bill would be the subject for future enquiry; but at the same time he felt that the observations made in this Council would go forth to those who would have to consider the details; and he felt it therefore incumbent on him to state his opinion on certain points, some of which were, it was true, points of detail, but still detail founded on important principle.

The first point he would call attention to was section 4, which provided for a right of occupancy in favor of ex-proprietors who had lost their proprietary right otherwise than by forfeiture to Government. He approved the general principle here laid down, but he was not sure of the exact bearing of the words "forfeiture to Government." Would it cover the case of purchase by Government for arrears of revenue? In other parts of the country, the right of occupancy was not extinguished by sale for arrears of revenue; but it was extinguished by the sale of the rights and interests of a proprietor in execution of a decree. Now, the term here used would permit of the maintenance of the occupancy-right where possession was continued after private sale or sale by the Courts. It was true that sale under decree was not a process at present in vogue in the Panjab, but they must look to the time when the practice there would be assimilated with that in other parts of the country. He did not at all object to the principle of maintaining the occupancy-right after sale under decree; for it might be fairly held that what was sold was simply the proprietary right, and in point of fact the ex-proprietor was generally allowed to continue as a cultivator. But there was something to be said on both sides; and as the principle would be to some extent different from what was followed elsewhere, it was a point which should receive careful consideration.

In the first part of the fifth section, which recognized the right of occupancy where recorded at the original settlement, after what he had submitted on the general principle of the Bill, he need not say he fully concurred with the provisions for rebutment reserved to the proprietor. The second test of occupancy for twelve years antecedent to 1849, *viz.*, up to 1837, or more than thirty

years ago, it would be almost beyond the power of any ryot, with the imperfect records existing under Sikh Rule, to prove, and he thought that this provision would be practically nugatory.

The grounds of rebutment seemed to him on the whole to be fair enough; but the adverse test in the third clause, namely, that tenants of the same class had been ordinarily ejected at will, might be difficult to reduce to a fixed and consistent rule. Of course isolated cases of ejectment, the mere occasional exercise of arbitrary power, if not in consonance with the sense of the people, would hardly constitute an adverse usage. He was not prepared to suggest anything more precise; but it was for consideration whether some definite rule could not be framed.

In the "Explanation," it was provided that voluntary exchange of land should not vitiate the ryot's title. It might be questioned whether the word "voluntary" did not bring an unnecessary element into the question. The fact of lands having been given in exchange formed in itself a *primâ facie* presumption that the exchange was made in satisfaction of some title or right, whether they were voluntarily accepted or not.

To the principle involved in section 6, after what he (SIR WILLIAM MUIR) had said on the Bill generally, he need not add that he did not share in the objection raised by the Lieutenant Governor of Bengal. If a cultivator could prove that at the original settlement he ought to have been recorded as having a right of occupancy, but for any reason was not so recorded, it was fair in theory that he should now be allowed to assert his position, subject to rebutment on the grounds indicated in section 5. But he agreed with the Lieutenant Governor that the section was not very clearly expressed. His chief objection to the provision was that it would be practically inoperative. It would be almost impossible now to go back to the old state of things existing at the original settlement, and say what would have been the decision then. If it could be done, of course it was right that the record should be so amended. But practically he did not think that they could arrive at any satisfactory result by the attempt.

He now came to the part of the Bill connected with enhancement of rent. The first case, that relating to ordinary occupancy ryots, provided that the rent should not be raised above eighty-five per cent. of the net produce. It did not say that in any cases the enhancement should be less, and he concluded therefore that the rents of all such ryots could be raised to within fifteen per cent. of such full standard. He did not object to this: it was to the standard itself of "net produce" that he took exception. But much of his objection had been anticipated by the Mover of the Bill having in his speech used the term "rack-rent" as synonymous. Now he (SIR WILLIAM MUIR) took the word "net produce" to mean that portion of the gross produce which remained after deducting therefrom the wages of labour, profit of capital, and other such charges. But it appeared to him that, if this were allowed, it would be going on an entirely wrong estimate of the nature of rent, for rent was a thing which adjusted itself on a great variety of considerations between the owner and the occupant. The only safe and just standard was therefore the rent actually paid by occupants at will for similar lands in the neighbourhood, with any percentage of reduction that might be thought right in recognition of the privileged nature of the tenure.

The second case provided that, for those occupants who had hitherto paid no more than their share of the revenue demand of Government, the rent should not exceed seventy-five per cent. of the net produce; and, with the same reservation, he approved the principle. These might be looked on as having a sort of quasi-proprietary claim, and it seemed fair that they should be allowed to continue in the enjoyment of a larger share of the profits than ordinary occupancy ryots; the arrangement being in fact that, of the standard rack-rent, the privileged occupant should have twenty-five per cent., and the proprietor twenty-five per cent., the remainder going to Government. But if this were enacted, care should be taken that the benefit was not conferred on those who had no proper title to it; and he was afraid that, as the provision now ran, it might include others. It was not sufficient that, before the institution of suit, the occupant had not paid at a higher rate than the land-revenue, for that might have been merely as a matter of favour, and not of right or in pursuance of a recognized usage. He thought that the ryots entitled to the privilege should be more carefully defined so as not to go beyond the class of tenants fairly entitled to it. Referring now to section 9, it was proposed in the third clause to enact that no enhancement should take place within three years of a decree, unless, among other reasons, on account of improvements made at the sole expense of the land-owner. If the improvement were made at the sole cost of the cultivator, it was presumed that the entire enhancement of value would be enjoyed by him; and this was the principle followed elsewhere. But SIR WILLIAM MUIR, was inclined to think that they had hitherto gone on a wrong principle in not recognizing the right of the proprietor to share in the enhanced value of his land, even if the improvements had not been effected at his cost. It was the improvable nature of the land which had rendered the work of improvement possible, and the proprietor had an interest in that improvable element as well as the ryot. Of course, if the improvement were effected solely at his cost, the entire enhancement of value should go to the proprietor, with such deduction as might seem adequate for increased labour, risk or responsibility on the cultivator's part. But it did not follow that the converse was equally true, and he should be glad to see the point farther considered. If the proprietor were allowed to participate in some degree in the fruit of improvements, however effected, it would impart to him an interest in permitting, and even stimulating, the ryots to make improvements, and in aiding in a variety of ways, such as allowing the use of tillage materials, which might not be reducible to a money estimate, but yet might be highly important to the ryot. Whereas, if he were held to have no share or interest whatever in improvements not effected by himself, it tended to make him obstructive, and throw hindrances in the ryot's path, which he could do in a thousand ways to the great detriment of the occupant.

The 13th section related to commutation of rents in kind. Rents in kind belonging to a backward state of society, it was quite right to provide that they should not be reverted to where money rents were already paid, without the consent both of the landlord and the tenant. He was not so certain of the equity of the first part of the section, which enacted that rent in kind should not be commuted into rent in money without the consent of the landlord. Looking to the great advantages of money rents under ordinary circumstances, it might have been worthy of consideration whether commutation into money might not have been enforced at the instance of either party, had the feeling against such a course not been so strong in the Panjab as was represented by Mr. Brandreth. There were, moreover, particular localities where the crops were very uncertain, or where, as in jungle lands, they were exposed to

ravages of wild beasts, or other causes of great fluctuation; and under these circumstances no doubt rents in kind were peculiarly suitable. Care should be taken specially to exempt those from any pressure in the direction of commutation into money; and this might perhaps be done by reserving a power of exception to the Executive Government.

Passing on to the chapter on ejectment, it was provided, under section 17, that tenants-at-will should receive a notice of landlord's intention to eject on or before the first of May; but no length of notice was stated. By section 19, a ryot might be ejected any time between first May, and fifteenth June. Apparently, therefore, notice might be served on the first May and ejectment be carried out immediately after. Now it was important that an ample term should be provided, say of a couple of months before the opening of the new agricultural season, to admit of the ryots making arrangements for a holding elsewhere.

Similarly, under section 23, the proprietor should have ample notice of the ryot's intention to quit, in order that he might make timely arrangements for the cultivation of the holding about to be abandoned: and he (SIR WILLIAM MUIR) was not sure that the fifteenth of May was early enough for this purpose. He would also observe that the section provided for the tenant "continuing liable for the rent of the land occupied by him;" now it was not for land occupied, but for land relinquishted, that the tenant should be held liable unless he gave timely notice to the landlord.

On the subject of sub-leases, he would remark that whatever was in accordance with the custom of the country in this respect should be legalized. In section 25, it was laid down that, notwithstanding the right of the cultivator to sub-let, if for three years he received no portion of the produce, his right was forfeited. Now, if this was in conformity with the usage, it was not to be objected to. But otherwise, it might occasion hardship and injustice, where, for special reasons, the ryot might be forced for a time, as, for example, by going on military or civil duty or other such cause, to absent himself, and commit his fields to the care of another for a longer period.

He came now to the provision in the 26th section, that if a landlord should prove that the quantity of land in his possession was insufficient for the support of his household, he could oust a tenant on payment of the market value of so much land as he required. He presumed that this meant that the proprietor's own holding and the rents receivable from his ryots were both insufficient for his support, which would imply a state of destitution on the proprietor's part hardly compatible with the idea of his having capital to buy up the ryot's holding. As to the provision itself, it was a very novel one, and its embodiment in the law could only be justified on its being clearly the existing practice. The main issue, namely, the sufficiency of a share in a village for the support of a family, was vague, and involved considerations which it would be difficult either to prove or disprove. Moreover, it might work harshly. For example, it would apply to the class of quasi-proprietors, now to be fixed as occupant ryots with special privileges. These, in common with all other ryots, would be placed in a very insecure position, and might be ousted under conditions difficult to anticipate. The "market value" was also an unsuitable term under present circumstance. For, hitherto, a ryot's tenure had not in most parts of the country been saleable; and it therefore had no market-value.

The next section (27), it was true, provided for the right of alienation on the part of the ryot. This was a new provision; but he did not think it unfair or unjust, if it were not inconsistent with the state of feeling among the people, and their notions as to their own rights. Otherwise, he would not force such a provision upon them. There was certainly no harm in allowing a transferable right to grow up in the ryot, if the proprietor did not object or if he silently acquiesced; any provision of law which should permit of this taking place would be unobjectionable.

Section 28 gave power to the ryot to cut down timber under certain circumstances. SIR WILLIAM MUIR was not sure that this was not an unjust infringement of the right of the proprietor. If the custom of the Panjab was against the exercise of such a power, he did not think that any sufficient case had been made out for now conferring it.

He came lastly to the sixth chapter, on compensation for improvements. Section 29 recognized the tenant's right to effect improvements if not prohibited by the proprietor; and this he thought sufficient. The following section proposed the novel condition, that any occupancy ryot might call upon his landlord to make an improvement, or permit him to make it, or otherwise to go into Court for permission. This seemed to SIR WILLIAM MUIR quite unnecessary. The provision in the previous section was quite enough. It was for the proprietor's interest that improvements should be made, at least it would be so if the principle he had before advocated, namely, the right of the proprietor to share in the benefits of an improvement, were admitted. And that would be quite a sufficient motive for his not interfering with the ryot, if indeed it did not lead him actively to assist.

In section 31 it was laid down that tenants, if ejected, should receive compensation for improvements effected by them within the last twenty years. This limitation of twenty years appeared wrong to him in principle. A ryot might have sunk a costly well, expecting to have a permanent return for the investment of his captial. It apeared wrong in such a case to fix any limit of time. Cultivators should be compensated for all unexhausted improvements, for which they had not already received a full equivalent. It should be left to the Courts to determine on the merits of each case what was an unexhausted and uncompensated improvement, without arbitrarily laying down a period.

In the definition of improvements perhaps "fencing" and "enclosing" might with advantage be added.

SIR WILLIAM MUIR apologized for having detained the Council so long. But the Bill was one that closely affected the largest and most important class of an extensive Province in their dearest rights, and he felt bound, therefore, to give his opinion on the leading provisions of a measure which would have so great an influence upon their well-being.

The Hon'ble MR. TAYLOR said that His Hon'ble friends Sir H. Durand and Sir William Muir had anticipated much that he had to say in regard to the unusual and imperfect form in which this Bill had been introduced. As to the general principle of the Bill, so far as it recognised the existing status of occupancy rights, he entirely concurred with Sir William Muir, and he also agreed

in many of his remarks on the several sections of the Bill. But it seemed to Mr. TAYLOR that his Hon'ble friend Mr. Brandreth had disarmed any close criticism of details at this stage of his Bill, by the proposal to publish it for a period sufficient to admit of their receiving opinions, and a judgment on its merits, from the most experienced officers of the Panjab before it went to Committee. When moving for leave to introduce the Bill, his Hon'ble friend stated that most of its provisions had either been approved or suggested by a Committee appointed to consider the question of tenant-right in the Panjab; but beyond this statement there was nothing before them to show that his opinions were shared by the other authorities of the Province he represented, or that he did not in fact stand alone in the views he had expressed. He (MR. TAYLOR) had heard indeed from several quarters during a recent visit to the Panjab, and His Excellency the President and his colleagues in the Executive Council would remember, in support of the fact, the voluminous proceedings on the subject which were under discussion a year and a half ago, that there were very material differences of opinion on this question of tenant-right among those who were most competent to judge; and he believed he was right when he said that those differences were by no means, reconciled in the Lahore Committee to which his Hon'ble friend had alluded and of which he was President. It might no doubt be admitted, *prima facie*, that what was good for the North-Western Provinces and for Oudh, might also be good for the Panjab; but Mr. Brandreth had himself told them that the general circumstances of the Panjab were very different, and to meet these differences, he had introduced into the present Bill provisions which were at variance in some material respects with those which had been made for the other Provinces. He had avoided, for instance, what was held to have been the mistake of Act X of 1859, giving rights of occupancy to tenants who had cultivated for a certain arbitrarily fixed period: but there were other points and other provisions of the Bill which, when the circumstances of the Panjab were considered, might be equally open to objection. Without, however, entering into these details, the question which he should be inclined to ask was, whether the Panjab Government itself, and the leading administrators of the Province, were satisfied that any such measure was required? Had it been carefully ascertained and established beyond a doubt that legislation in this direction was really wanted? Had Native opinion been appealed to in a matter upon which the people, through their representative men, were so eminently qualified to judge for themselves? And, again, he would ask, was this Bill simply declaratory of well-known existing rights, or did it, in any of its sections, create new rights which the people neither appreciated nor desired; or, on the other hand, destroy old rights which were valued and cherished by any section of the community? He must repeat what he had urged in somewhat similar terms elsewhere on a former occasion. He contended that the Government were right to legislate for the general good of the people even in matters affecting private rights; but such legislation ought, in his opinion, to be carefully directed to clear up whatever was doubtful in the existing law or definition of rights, to remedy needless restrictions upon real and substantial interests in land, in view to their development for the public good, and to commute and settle for ever all dormant and mischievous claims. But to create new kinds of tenures, and to confer new rights, irrespective of the existing state of things, without consulting the wishes of the people and satisfying themselves that action was really wanted, would be a measure of legislation both unsound in theory and dangerous as a precedent.

His Excellency THE COMMANDER-IN-CHIEF said that, with the present amount of information before the Council, it appeared to him extremely doubt-

ful whether the measure should be allowed to go into committee. Sir Henry Durand had stated that he would not pledge himself to any of the principles of the Bill, and considered the introduction of it merely a tentative measure; Mr. Taylor had great doubts whether there should at present be any legislation at all; and although Sir William Muir appeared to be in favour of legislating, still he seemed to be actuated by some of the considerations brought forward by Mr. Taylor, and to think that the Council had not before them sufficient information, and that the Bill should have been introduced with the authority of the Local Government. Without attempting to give any opinion on the Bill, or the various principles it embodied, it seemed to HIS EXCELLENCY that they were not as yet in a position to take up the Bill, or consider it so that the results of their deliberation would be of any use in guiding the Committee to which it was proposed to be referred. As he understood the constitution and practice of the Council, if the Bill were so referred, the Committee would hold that the principle—or rather principles, for there were many—of the Bill had received a general sanction from the Council; but if they referred the Bill to a Select Committee with the intention of afterwards throwing it out, or of altering it altogether in principle, it seemed to HIS EXCELLENCY that such a course was not suited to the dignity of the Council. He would therefore wish that the consideration of the Bill should be deferred till they were favoured with the reports which had been promised by Mr. Brandreth, and then they would be better able to judge of the propriety of proceeding with it according to form.

The Hon'ble MR. COCKERELL said he shared fully the general impression set forth in the speeches of the Hon'ble Members who had addressed the Council, as to the insufficiency of the information upon which they were called upon to assent to the principle of a Bill which had for its objects the introduction of most important changes in the relations of landlord and tenant in the Panjab, and he concurred in the conclusion expressed by the last speaker (His Excellency the Commander-in-Chief) as to the doubtful expendiency of assenting to a Bill, the principles of which they were not in a position to affirm, being referred to a Select Committee.

The proposed measure would seem to have been brought before the Council with unnecessary precipitancy. It was well known that some of the most important provisions of the Bill had for some time past been the subject of much discussion in the Panjab, yet not a single paper had, up to the present time, been laid before the Council, to show how far the conclusions upon which the Bill was founded were in accord with the views of those officers whose local experience entitled their opinion on the very difficult question of the relative rights of landlord and tenant to the greatest weight, nor in what way and to what extent the existing relations between those classes in the Panjab called for the remedy of special legislation.

The provisions of this Bill which, in the absence of further information on the subject appeared to be most open to objection, were contained in Part II.

They purported to create a presumption of the existence of rights of occupancy in favour of a tenant who, having been himself the proprietor of the land occupied by him, had lost his proprietary interest in, but retained his occupancy of, the land continnously, or of a tenant whose right of occupancy had been recorded in the papers of a regular settlement sanctioned by Government previous to the passing of this Bill into law.

In support of these provisions, reference had been made to the somewhat analagous conditions of Act X of 1859, and the Oudh Rent Bill, which had not yet become law, in regard to rights of occupancy.

There was perhaps no provision in the Act referred to, the equitable character or expediency of which had been so much questioned, as the clause which denied the title of the landlord to re-enter upon land which he had suffered to remain in the unconditional occupancy of the tenant beyond the arbitrarily prescribed period of twelve years. Moreover, this provision of the Act was framed for application to that part of the Indian empire which had long been under our rule, and in which a more clearly defined and long established usage gave some sort of sanction to the principle which it involved; whilst, in the case of the Oudh Rent Bill, the creation or affirmation of the existence of rights of occupancy on the part of the tenant was based on the assent of the landlord; and although he ventured to doubt the equity of the recognition of the right of proprietors to fetter the interests of their posterity in this manner, in a country where the law which governed ordinary dealings with immoveable property jealously guarded the rights of the natural heir, by the restrictions which it imposed on the power of the owner for the time, in the exercise of his rights of ownership in dealing with such property; yet in that case there was a semblance of authority for the action which had been taken, such as appeared to be wholly wanting in the present case. On what considerations could it be reasonably declared that the mere fact of a quondam proprietary interest on the part of the occupier, no matter how it was originally acquired or how (save in the exceptional cases specified in the Bill) it had lapsed, enhanced the value of his subsequent tenancy interest? What security was there for the equitable declaration of the validity of a title to occupancy—and he apprehended that this proposed rule was likely to govern the vast majority of cases—resting merely upon the record of a right of occupancy in a regular settlement approved by Government? Sir W. Muir considered, for the reason stated in his speech, if he rightly understood him, that such record did afford a trustworthy ground for the affirmation of the tenant's right; but the Hon'ble Mover of this Bill admitted that the former settlement records were in this respect of more than doubtful validity, and although he added that the revised settlements then progressing were bringing to light and rectifying the errors of the past, he would remind the Council that the Bill as it now stood by implication excluded the records of settlements not completed and sanctioned by Government ere it became law.

As against the conclusions of the Hon'ble Member above referred to (Sir W. Muir) in regard to the value of the settlement papers as the basis of rights of occupancy, he might quote the statements of an officer to whom reference had been frequently made by the Hon'ble Mover of this Bill in his introductory speech, and whose assertions and opinion in a matter of this kind, from his long practical experience of settlements in the Panjab (he alluded to Mr. Prinsep) seemed to be entitled to the utmost consideration. With the permission of the President he would read portions of a letter addressed by this gentleman to a late Hon'ble Member of this Council upon the subject of this Bill. In regard to the provisions to which his remarks had been particularly directed, Mr. Prinsep wrote—"It comes out that there were no such proceedings as established the existing status in the record. The village accountants, when they drew up the records, filled in *merely on the period of occupancy test.* There was no enquiry, no confronting, no declaration made by the settlement officer" * * * "In Guzarat alone and north of the Chenab was there such

a real enquiry" * * * "In five other districts there were no such papers showing a formal enquiry. The entries were made merely by the Patwaris" * * * As to the affirmation of these rights by decisions of the Courts, Mr. Prinsep said—"What are these decisions? 300 or 400 contested suits at most in each last settlement. Look into them, and you will find the same ruling principle, that the Courts looked to twelve years and twenty years, and nothing else, for no other reason gave the privileged status. This is a fact, and it is totally contrary to all that agrees with ***our*** notions of *equity, common sense and village customs.*"

Here then was the deliberate conviction of one of the most experienced officers engaged in the administration of the territory to which this Bill applied, that the leading principle upon which it proposed to declare a right of occupancy to be vested in the tenant was unsound and inequitable. It was stated moreover—and in the absence of the publication of any papers to prove the contrary, they were justified in accepting the statement—that this conviction was shared by several of the leading officers of the Panjab. Such being the case, he submitted that it was incumbent on this Council to pause and await some further information on this subject ere it committed itself to the approval of the principle of those provisions of the Bill which related to the tenant's rights of occupancy by referring the Bill in its present shape to a Select Committee. For, so far as they had the means of coming to any conclusion in regard to the main condition of the declaration of a right of occupancy being vested in the tenant, that status rested solely upon the test of the arbitrarily fixed period laid down in the provisions of Act X of 1859, and derived no support from the results of any careful and detailed examination of the pre-existing relations between landlord and tenant in respect of the matter in the Panjab, by which the question of the equity of this test could be satisfactorily determined. Entertaining these objections in regard to the principle of the fundamental provisions of the Bill, it seemed unnecessary for him to comment on its details. He would only remark that the provision in section 26, by which, in certain circumstances, a right of re-entry was conceded to the landlord upon land occupied by his tenant, under conditions by which an absolute right of occupancy adverse to his landlord was declared to be vested in him, involved an apparent inconsistency of principle which was of doubtful expediency; and that the matter of section 27 seemed also to be objectionable. If a tenure in which the tenant's permanent interest was limited to a right of occupancy at an equitable rate of rent was, under the prevailing local usage, either not transferable by sale or otherwise, or transferable only with the expressed consent of the landlord, then he (MR. COCKERELL) would observe that no valid reasons had been assigned for the proposed reversal of such usage.

For the reasons which he had stated above, if the Hon'ble Mover pressed his Motion to a division, he should feel obliged to vote against the Bill going into Committee in its present shape.

The Hon'ble MR. STEUART GLADSTONE had not intended to say anything on the subject of the Bill before the Council, because he must admit that it was a subject of which he was very ignorant. He thought, however, that it was a good rule not to disturb any arrangement that had worked well, unless dissatisfaction was clearly expressed regarding it, by persons able to speak with authority, or something was otherwise shown to necessitate legislation on the point. He agreed with His Excellency the Commander-in-Chief that, at the

present stage of the measure, no such cause appeared to have been shown, and that the consideration of the measure should therefore be postponed till the receipt of the reports that had been alluded to by the Hon'ble Member in charge of the Bill.

The Hon'ble MR. SHAW STEWART said that when they considered the great interest that now attached to the question of tenant-rights and property in land in Ireland, in India, and throughout many portions of Her Majesty's dominions, it would have been surprising if a measure like the Bill before them could have been introduced into any assemblage of Englishmen entrusted with legislative functions without obtaining the attention and consideration evinced by this debate. Though, like the Hon'ble gentleman who spoke last, he had come unprepared to discuss the Bill on this occasion, yet several points had been stated in debate to which he would like to refer in a few words. His Hon'ble friend, Sir William Muir, appeared to have understood the Bill to be founded on the principle of upholding the settlements made in the Panjab fifteen or twenty years ago. Now he must confess that he had formed a different idea of the Bill, and one which agreed with that of His Honour the Lieutenant Governor. He thought all they had heard from the Hon'ble Mover showed that this Bill proceeded on the assumption that the settlements were made on erroneous principles, and was intended to offer to persons affected by those settlements an opportunity of upsetting them of which they had hitherto been deprived. Looking at the Bill in this light, he would observe that, from several years' experience in the province of Sind, whose revenue institutions and usages were not dissimilar to the Panjab, he was able to confirm much of what his Hon'ble friend the Mover said as to the difficulty of dealing with this question. In Sind they had many classes of tenants—some absolutely tenants-at-will, some with occupancy-rights but liable to enhancement of their rent, some with occupancy-rights and free from liability to enhancement, in fact nearly proprietors, and some with no defined rights at all. He could also confirm his Hon'ble friend's opinion as to the necessity of recording these rights at the time of settlement, and that no settlement could be really efficient or popular where this record was not made. But at the same time he must say that he had grave doubts as to the propriety of altering by force of law these settlements, which had been in force for many years, by which, as his Hon'ble friend stated, the Courts had been guided, and by which the interests of an indefinite number of persons in the Panjab would be seriously affected. As he regarded this to be the scope and effect of the Bill, he could not, in the absence of any expression of opinion on the part of those most interested—the landlords and tenants of the Panjab—approve of this Bill going further at present. They had had opinions read to them which led him to doubt if the people of the Panjab themselves required any legislation; and if the forms of this Council admitted of it, he would be glad to see the question before them postponed until the reports of the Lieutenant Governor of the Panjab and the financial officers there were *laid* before them.

HIS HONOUR the LIEUTENANT GOVERNOR would, with His Excellency the President's permission, say a few words before Mr. Brandreth made his reply. HIS HONOUR thought it very much to be regretted that the correspondence on the subject of the Bill, which had already been carried on in the Panjab, had not been printed and communicated to the Council when the Bill itself was circulated. HIS HONOUR could not help thinking that, if that had been done, the Bill would have received the support of the Council, instead

of, as was likely to happen, being altogether postponed. The two main objects of the Bill were to give landholders the opportunity of upsetting some of the rights of occupancy which were almost unanimously admitted in the Panjab as having been established on too large a scale at the time of the first settlement. That, HIS HONOUR thought, might be said to be *the* object of the Bill; and then the opportunity was taken of defining the general rights of landlords, and of tenants having a right of occupancy. There was not the slightest doubt that some legislation on the subject was required. HIS HONOUR did not believe that any one with a sense of justice, who read the reports that Mr. Prinsep had submitted, would deny that some legislation was required to meet the cases mentioned in those reports. HIS HONOUR would therefore extremely regret that His Excellency the Commander-in-Chief's proposed motion should be carried. Every object would be gained if Mr. Brandreth would alter his Motion and refer the Bill to Committee for two months instead of six weeks, and if the Government would publish the correspondence which had lately taken place in the Panjab, and also lay before the Committee those further reports to which he had referred, and which were expected to be received. HIS HONOUR was the more induced to press for the whole correspondence being put before the Council, because some remarks had been made with regard to Mr. Prinsep, which were likely to prejudice the Council against that gentleman. It was said, for instance, apparently as a reproach, that Mr. Prinsep was biassed by a strong personal feeling. HIS HONOUR had had the opportunity of seeing some of Mr. Prinsep's reports, and was aware that he held strong opinions. He was strongly of opinion that great injustice was done at the time of the last settlement, and this being so, surely it was no reproach that he held a strong opinion that the injustice should be remedied. If there was any reproach attaching to a strong personal opinion of right and wrong, HIS HONOUR was quite sure that it would attach more to those who, in some parts of the country, advocated with indiscriminate zeal what they considered rights of tenants as against the rights of land-lords. HIS HONOUR would urge the Council to allow the Bill to go into Committee, in order that some measure might be passed which would put at rest questions that were now the subject of constant dispute, and formed an element of disturbance in the Panjab.

The Hon'ble SIR WILLIAM MUIR begged the President's permission to make an explanation. The last speaker had implied that he had attributed to Mr. Prinsep the holding of certain views in the way of "discredit and reproach;" that, in the Lieutenant Governor's opinion, being more properly attributable to the party who sought to force the opposite views throughout the country. He (SIR WILLIAM MUIR) emphatically disclaimed the most remote intention of anything "like discredit or reproach" being attached to Mr. Prinsep. He honoured that excellent officer, not only for holding by views which he honestly entertained, but for doing all in his power to give effect to those views. What he did say was, that this was a subject on which it was obvious that extreme opinions were held on both sides: it was no reproach to Mr. Prinsep that he did hold strongly his own views; nor did he (SIR WILLIAM MUIR), like the Lieutenant Governor, attribute discredit or reproach either to the one side or the other for endeavouring to give effect to those views. His argument simply was this, that opinions on the subject being liable to one-sidedness, it was the province of the Government, and was specially incumbent on it, to hold the balance, and having duly weighed all that was urged on either side, to come forward with a Bill as its own measure and on its own responsibility.

HIS HONOUR the LIEUTENANT GOVERNOR said that he never intended to say, nor did he suppose, that Sir W. Muir had said anything to reflect personally to the discredit of Mr. Prinsep. All HIS HONOUR meant to say was that the allusions that had been made tended to discredit the opinions of that gentleman.

The Hon'ble MR. BRANDRETH said that, before adverting to particular points in the Bill itself, about which several Hon'ble Members had spoken in this debate, he wished first to advert to the supposition of his Hon'ble friend Mr. Taylor, that the provisions of this Bill were in opposition to the proposals of the Committee which assembled recently at Lahore for the purpose of considering the different matters relating to tenant-right which required legislation. He did not know where his Hon'ble friend obtained his information on this subject, but what he stated when he moved for leave to introduce the Bill, that most of its provisions had been either approved or suggested by the Lahore Committee, was substantially correct. He had there a copy of the suggestions for a Draft Bill made by the Lahore Committee, and signed by the different members, which his Hon'ble friend could compare with the present Bill if he thought proper. His Hon'ble friend, Sir W. Muir, also had concluded that this Bill had been introduced without the Lieutenant Governor of the Panjab having expressed any opinion on the subject. When MR. BRANDRETH stated that the Lieutenant Governor had not yet expressed his views upon the Bill, all he meant to say was, that a copy of the Bill as then introduced had not been seen by the Lieutenant Governor; but he was justified in stating that the Lieutenant Governor was strongly in favour of legislation on these subjects, and he trusted it would be found that many of the provisions of this Bill were in accordance with his views. He had there a letter from the Secretary to the Government of the Panjab, dated 8th November 1867, to his address, in which he was informed, with reference to a Draft Bill which was before the Lieutenant Governor at Murree, many of the provisions of which resembled those of the present Bill, that His Honour generally approved of the provisions of the Draft Bill, but reserved to himself the right of expressing his views on the subject more fully thereafter. The Bill as it at present stood was introduced entirely on his own responsibility, though in accordance, he thought, with the justifiable supposition that he was not introducing a Bill which would be disapproved of by the Lieutenant Governor; and he informed the Council that the only reason why he had not deferred the introduction of this Bill until it had been seen by the Lieutenant Governor was that, unless he had published it at once, it did not appear to him that sufficient time would be allowed before the conclusion of the session to obtain the opinions of some of the many experienced officers in the Panjab, which he was so anxious to obtain. He considered that he had sufficient information from the papers in his possession, added to the knowledge he had himself acquired, during several years of employment in the Panjab, of the landed tenures in that Province, to justify his bringing in this Bill. If he had made out a sufficient case for this Bill, and if nothing conclusive or definite against the principles on which the Bill was based had been brought forth in this debate, as it appeared it had not, then he trusted that the Council would allow the Bill to go into Committee. As regarded some of the points that had been more particularly adverted to, His Honour the Lieutenant Governor had correctly described the objects he had in view in framing the fifth section of the Bill; but as regarded the sixth section, which His Honour thought was opposed to the principles on which the former section was framed, he (MR. BRANDRETH) would explain that the names of tenants were sometimes omitted altogether from

the settlement records, or else their status was erroneously described. When there were obvious and clearly demonstrable mistakes, it seemed to him necessary to provide, as had been done in this section, that tenants who were not recorded as having rights of occupancy should have the same rights as other tenants who were so recorded. His Honour also doubted the expediency of the twelfth section of the Bill allowing a remission of rent, if the produce of the land had been diminished by drought or hail or other calamity beyond the control of the tenant. If a tenant lost his whole crop by any such calamity, and were compelled to pay the whole of the rent fixed for the land, he might be utterly ruined. The Government often recognized the necessity of remitting its own demand for revenue on the land-owner when the crops had been destroyed, and it seemed desirable to give the Courts the power of allowing a similar remission between land-owner and tenant whenever there was an urgent necessity for going so.

The next speaker his Hon'ble friend Sir W. Muir, objected to the wording of the third clause of section 5 of the Bill, and especially to the word "ordinarily" in that clause as leaving the matter too indefinite. If the wording only was in fault, it could easily be altered. The object of the clause was to provide that, where a tenant, from seeing other tenants in his neighbourhood like himself ejected from their holdings at the sole pleasure of the land-owner, had reason for knowing that he himself was also liable to objectment, he should be considered a mere tenant-at-will. His Hon'ble friend also objected to the word "voluntarily", used in the explanation added to the abovementioned section, wish reference to the exchange of land by a tenant. That word was designedly used to make it clear that the exchange was made with the consent of the tenant; otherwise, if made without his consent, it was certainly considered that the tenant would lose his right of occupancy by the exchange. His Hon'ble friend had also objected to the term "net produce" used in the 8th section of the Bill, which he apparently considered had a different meaning from the word "rack-rent," which MR. BRANDRETH had used when alluding to this section in his opening speech. He was surprised at his Hon'ble friend having any doubts about the meaning of the word "net produce," especially as he adopted the word from an edition of the "Directions to Officers in the North-Western Provinces," edited by his Hon'ble friend himself, where the word was defined as meaning the ryot or produce rent paid by labourers raising their wages from the soil. Rent, in fact, as used by political economists, meant the same thing as net produce; but he could not use the word rent in this section as identical in meaning with net produce, because, for the special purposes of this Bill, a different and more restricted meaning had been attached to the word "rent" in the interpretation-clause of the Bill. He trusted also that his Hon'ble friend was not quite correct in his use of the term rack-rent, when he spoke of it as the rent paid by tenants in places adjacent to the land of the tenant whose rent it was proposed to enhance. With regard to remarks made by his Hon'ble friend upon clause 3 of section 9, when he said that by this Bill no benefit was allowed to the land-owner in the increased rent yielded from improvements made by the tenant, he admitted there was some weight due to his Hon'ble friend's remarks, and that they well deserved the attentive consideration of the select Committee to which he hoped this Bill might be referred; but it seemed to him on the whole that, if the option of making the improvements was first given to the land-owner, and he did not avail himself of it, it was not necessary to give him any share in the increased rent, obtained solely from the improvements effected by the tenant under such circumstances. Then, as to the period of twenty years which his

Hon'ble friend objected to, as the rent payable by tenants having right of occupancy was limited to a certain proportion only of the net produce, the remainder of which they were permitted to keep for themselves in satisfaction of their rights of occupancy, it was evident that they must necessarily, derive great benefits from any improvements they might have made, after the expiration of twenty years from the date of the improvements being made, though no special provision to that effect, giving them greater benefit than they would thus necessarily obtain, had been made in the Bill or considered requisite by him. Sir William Muir remarked regarding the 25th, 27th and 28th section of the Bill, that he would not object to them if they were in accordance with the well-recognized custom of the country; that was, however, just what they were not: if they had been, there would probably have been no necessity for giving them a place in this Bill. The reason for the 25th section was that, as a tenant could not alienate his land, it seemed reasonable to infer, as regarded a cultivator who had not the ownership of the land, that he had alienated it, if he had derived no benefit from it for three years, and that it should in that case lapse to the land-owner. As regarded the other two sections, the question for the Council to consider was, whether the disabilities there referred to were of an injurious and unreasonable character: if they were, then, whether they ought to be removed on payment by the tenant of, compensation to the land-owner. His Hon'ble friend had noticed some other points, but perhaps the consideration of them might suitably be left to the select Committee to which he trusted the Bill would now be referred.

The Hon'ble Mr. Taylor would also ask His Excellency's permission to correct a misapprehension of the tenor of his previous remarks on the part of his Hon'ble friend Mr. Brandreth. He need scarcely assure the Hon'ble Member that nothing could be further from his wish than to give expression to an opinion that his Hon'ble friend was not in every respect qualified, by his long experience of the Province and by his ability, to deal satisfactorily with the question of tenant-right, and to carry a measure through the Council which would fully meet the requirements of the country. All that was desired was that, as considerable difference of opinion was known to prevail, the Council should be in possession of the views of other authorities, especially those of the Lieutenant Governor, and of the members of the recent Lahore Committee, whose opinions as to the necessity of legislation in the form of the Bill as introduced were not, he (Mr. Taylor) was led to believe, in complete accord with those of his Hon'ble friend.

His Excellency the President said, he hoped Hon'ble Members would consent to the Bill being referred to a select Committee. A strong argument in favour of that course was that, if the Bill was not referred to a Committee for consideration and report, much valuable time which had been occupied in the discussion of the Bill, and which could ill be spared, would be lost. There could not be the shadow of a doubt that not only the Lieutenant Governor of the Panjab, but Mr. Prinsep himself, was in favour of legislation on the subject. So long as two years ago (it was about July or August 1866), Mr. Prinsep himself (who, His Excellency might say in passing, was an old friend of his, and whose ability and capacity His Excellency highly estimated) wrote to him (the President) that he was going on at a great pace, inquiring into, scrutinizing, and even deciding, those questions of tenant-right, during the progress of the settlement which he was empowered to make in various parts of the Panjab. He added that he was in almost a disagreeable position in consequence of there being no distinct law on the subject. His Excellency's

reply to Mr. Prinsep was that he should consult the Lieutenant Governor of the Panjab and take his orders. Mr. Prinsep did so, and wrote again to him (THE PRESIDENT), and said that, with the consent and approbation of the Lieutenant Governor, he would like to come up to Simla and go into the subject. Mr. Prinsep came accordingly, and HIS EXCELLENCY then looked through all the papers which Mr. Prinsep had brought with him, and came to the conclusion, not only that there had been errors committed to a certain extent in the settlement of the Panjab, but also that they were bound in justice to allow a reconsideration of the subject. There were certain points, however, on which HIS EXCELLENCY differed with Mr. Prinsep. HIS EXCELLENCY thought that perhaps Mr. Prinsep went too far in favour of landholders, and did not sufficiently take into consideration the circumstances under which, practically, tenants in the Panjab had, under the Sikh Rule, acquired rights and interests antagonistic to those of the land-owners: nevertheless in many points HIS EXCELLENCY agreed to what Mr. Prinsep desired. HIS EXCELLENCY then drew up a Note on the subject, which was circulated amongst the Members of the Government. Mr. Prinsep returned to the Panjab with the understanding that the matter would be then sifted and considered, and a reference made to the Government of India in view to legislation on the subject. Since then nearly two years had elapsed and further enquiries had been made. A Committee had been appointed by the Lieutenant Governor to consider the matter, and the result was that Mr. Brandreth was authorized by the Lieutenant Governor to take up the subject, and, with his entire consent, had come down to Calcutta and introduced the Bill. HIS EXCELLENCY thought that, under those circumstances, Hon'ble Members should not hesitate to allow the Bill to go into Committee, on the understanding, of course, that no final report was made on certain points until the Lieutenant Governor's detailed opinions on the Bill itself, and those of any other gentlemen in the Panjab, official or non-official, who might like to make their reports, should be before the Committee. But there were many points on which there would be no difference of opinion; and these—some of them of considerable importance—might in the meantime be settled by the Committee. On such points the grounds of legislation would be clear, and only those points would be kept in reserve on which there might be reasonable and fair doubts. As to the question of tenant-right, everybody knew that, not only in the East, but in the West, there was the strongest difference of opinion. Some authorities were in favour of the landlord holding adversely to the tenant; to others the converse appeared to be equally clear. But HIS EXCELLENCY thought that what was really wanted was to have such a compromise as would secure the just and fair interests of both parties; that was, that the landlord should not be overborne, that he should have what was reasonable and fair, and that, on the other hand, the prescriptive advantages that tenants had in the Panjab should be secured. That being done, a definite settlement would be arrived at and be enforced by legal enactment. Nothing could be worse for the interests of the landlord and the tenant—for all interests—than to leave such things in a state of doubt or conflict, which invariably gave rise to the greatest antagonism amongst the people. It was common to find on one side of the Panjab, and even in different parts of the same district, that the landlords were powerful, and there they oppressed their tenants; and in other parts you found tenants powerful from various causes, and there they denied the just rights of landlords. All this was very bad. In his (THE PRESIDENT'S) mind, one of the great arguments in favour of the British Government of India was the way in which they had tried to put, not only the land-revenue of the country on a fair and stable footing—to reduce the demands of Government to a fair proportion of the produce

of the soil—but simultaneously, or nearly so, to define all rights and interests in the land. HIS EXCELLENCY was one of those who had always thought that there was a real and true proprietary interest in the soil, though he believed there were many persons, from different parts of the country, who maintained that there was no such thing as a proprietary right in land. In many parts of India it was a received maxim that there was no such right. HIS EXCELLENCY admitted that, in many places where the Mahrathas and Pindaris overran the country, the population was destroyed, landlords and their descendants were swept away, and there proof of proprietorship in the land had to a great extent disappeared, but even in those parts there were designations of tenures which showed that there must at one time have been an hereditary proprietorship in the soil. There was no doubt also in his (THE PRESIDENT'S) mind, that in many respects the tenures of the Panjab and the North-Western Provinces were identical, and that where there was a considerable difference it had arisen from the action of different rulers during late years. In the Panjab, where a real and true proprietary right existed, the value of that right had almost sunk to zero under the Sikh Rule: in parts of the country, many of the landed proprietors were almost in the same position as their tenants; for the Government took almost as much from the proprietor as the rent of his land, and where any rent was in reality retained by the landlord, it was in the proportion of one or two per cent. of the rent, three per cent. being considered a large proportion for him to receive. Under such circumstances, the landlord had little on which to found his right of proprietorship, and it was only his attachment to the soil that led him to wait and hope for better times and maintain his assertion that the land belonged to him. But another circumstance must be considered: that the value of the land being so small, the landlord was only too glad to get cultivators to remain in his village, and in some cases the landlord bore a larger proportion of taxation than the cultivator himself, and was satisfied if the cultivator recognised the right of the land-lord theoretically, and gave him some trifle, something at a marriage or festival. It would not be reasonable, after such a state of things had grown up, to turn round and say that, because the Government had reduced the land-tax and revived interests practically in abeyance, you should therefore sweep away the tenants' right. HIS EXCELLENCY was convinced that a satisfactory compromise could be made. If our officers only held fairly the balance between the two parties, he had no doubt they would come to an agreement amongst themselves. The settlement officer would only have to act as mediator, and things would almost adjust themselves; but without that action on the part of our officers, things would remain in their old state of conflict. HIS EXCELLENCY did not want to dilate on these matters: he could say a good deal more on the subject; but having expressed those opinions, he did hope that the Council would allow the Bill to go into Committee, with the understanding that under no circumstances should the Committee report till they had all the information they required before them. While HIS EXCELLENCY would not desire to fix so long a period as two months—and he hoped all the information would be available within six weeks—it could be clearly understood that, until then, no report would be made.

There were one or two points in the Bill on which it might be well for him to say a few words. On the question raised by His Honour the Lieutenant Governor, as to section 6, HIS EXCELLENCY thought His Honour's remarks were just. It struck him (THE PRESIDENT) that the latter provisions of the section under notice were not well worded. What HIS EXCELLENCY presumed was intended was this, that inasmuch as you proposed by the fifth section to

give the proprietor the right of asserting his claim, the converse was intended to be provided by the following section, *viz.*, that where the cultivator had not brought forward his claim during the settlement, you would give him an opportunity of proving any right that he possessed but had failed to assert at the time of the settlement. But as the sections now stood, it appeared that, as you told the tenant "under the old rules you would have been recorded as a tenant with a right of occupancy," and then told the landlord "I now give you the right to show that the tenant should be turned out again," there appeared to be an inconsistency in that. This, however, could be set to rights by some verbal alteration.

To another point raised by His Honour the Lieutenant Governor, the Hon'ble Mr. Brandreth had already replied, *viz.*, the objection to give a reduction in certain cases of calamity. It struck him (THE PRESIDENT) that that provision—it was in Section 12—was not an unfair one; because, in the case of calamities of the kind contemplated by that section, it had always been the custom in those Provinces that were not permanently settled to give the landlord a remission of revenue. Now, if landlords came to the Government and asked for relief of this kind, they should deal in like manner with their tenants. When the land-owners of Orissa asked the Government to suspend the collection of their revenue-instalment, the Government agreed to do so, provided the land holders did the same with their tenants. That, HIS EXCELLENCY thought, was the kind of case intended. What probably led His Honour the Lieutenant Governor to allude to the matter was that, in Bengal, the assessment of revenue was very light, and reductions or suspensions of the Government demand were seldom allowed, but in provinces such as that to which the Bill would apply, the assessment had always been high.

With regard to section 13, on the point of commutation. The section seemed to him (THE PRESIDENT) on the whole fair, but it might be made still more so by the option being left to the tenant on exactly equal terms; that was to say, that rent in money should not be turned into rent in kind, nor rent in kind turned into rent in money, without the consent of the tenant. As the section stood, no commutation of rent in kind into rent in money would take place without the consent of the land-owner; but no commutation of rent in money into rent in kind could be made without the consent of both the land-owner and the tenant. The remarks which Sir William Muir had made on this subject seemed to be fair. In parts of the country, it was of advantage to proprietors to receive payment of rent in kind, but there were other parts where it was to the advantage of the tenant to pay in kind. Where the people, landlords, and tenants, were of the same race, they generally came to an understanding. There were, however, some localities where there was a strong antagonism between landlord and tenant from some cause, and in those cases constant disagreements went on, and great injury to the common interest arose, from the circumstance of rents being paid in kind. It was almost impossible to adjust those differences, and it was to the common interest to have the rent made payable in money.

There was one point raised by Mr. Cockerell to which Mr. Brandreth had not adverted in his reply. It appeared to HIS EXCELLENCY that there was no provision in the Bill whereby the right of occupancy was given by the lapse of a certain number of years: on the contrary, section 7 provided that no tenant-at-will should be deemed to acquire a right of occupancy by mere lapse of time.

His Excellency the COMMANDER-IN-CHIEF had listend to His Excellency the President's remarks with the greatest respect and deference, but as several Hon'ble Members had testified their wish to support his (THE COMMANDER-IN-CHIEF'S views with regard to its being expedient to defer the further consideration of the Bill till the receipt of the expected reports, it seemed necessary to take the sense of the Council. He had no wish to offer opposition to the measure at this stage as regarded its ultimate progress. HIS EXCELLENCY would therefore ask leave to move as an amendment—

That, in the present motion, for the words "that it be referred to a Select Committee with instructions to report in six weeks," the following words be substituted—"that the consideration of the Bill be postponed till further reports are received from the Panjab."

HIS EXCELLENCY did not desire to refer to the former debate, which would be irregular, but he would take the opportunity of saying that, whilst the debate had been proceeding, he had had an opportunity of referring to the opinions written by the members of the Executive Government about a year and a half ago. While abstaining from quoting the opinions of the other members of the Government, HIS EXCELLENCY might say that, on the very voluminous papers then referred to him, he had not formed an opinion favourable to legislation on the matter. Seeing that HIS EXCELLENCY had not received any further information, and that no further opportunity of considering the subject had been afforded to him, he was as yet bound by the opinion he then expressed. Wherefore HIS EXCELLENCY hoped that that would be taken as an excuse for his wishing to be further instructed by the reports of the Lieutenant Governor of the Panjab and other authorities qualified to give an opinion on the subject, so that HIS EXCELLENCY might, through the debate that would take place on those reports, be in a better position than he was now in, to reconsider the opinion he had formed on this subject: Such a debate would certainly be of great use to the Select Committee, which would then have some guidance as to the real views of the Council. HIS EXCELLENCY would repeat that he was confirmed in the position he had taken by the opinion of those Members who had sided with him, and that this motion was not intended as one of opposition to the measure.

The Hon'ble MR. SHAW STEWART said that, with every deference to His Excellency the President's views, he would suggest to his Hon'ble friend the Mover that, instead of dividing the Council, he should adjourn his Motion to refer the Bill to a Select Committee.

The Hon'ble MR. BRANDRETH said, from what had fallen from Hon'ble Members, it seemed to be expected that there would be some further reports. He wished, however, to guard himself from any misunderstanding, and to point out that what the Lieutenant Governor of the Panjab had said was that he would defer making any remarks on the subject until the Bill had been introduced.

His Excellency THE PRESIDENT said that the Lieutenant Governor of the Panjab had written to him that he desired legislation on the subject, and asked how the Bill was to be published if it were not introduced into Council.

The Hon'ble Major General SIR H. M. DURAND said, that His Excellency the Commander-in-Chief's amendment seemed to him somewhat misapprehended. It raised no objection to Mr. Brandreth's Motion "to introduce the Bill to define and amend the law relating to the tenancy of land in the Panjab." It merely would supersede the latter clause, which referred the Bill to a Select Committee with instructions to report in six weeks, or two months as altered by the President. The amendment offered no difficulty, therefore, to the introduction and publication of the Bill; it only affected, temporarily, the proposed immediate reference of the Bill to a Select Committee.

His Excellency the COMMANDER-IN-CHIEF signified his assent to this view of his amendment.

The Right Hon'ble MR. MASSEY said, if His Excellency the Commader-in-Chief would agree to withdraw his amendment, he would propose that the debate be adjourned for a month.

HIS EXCELLECY the PRESIDENT thought the result of such an adjournment would be tc prevent legislation on the subject during the present session.

The Right Hon'ble MR. MASSEY continued—With due difference to His EXCELLENCY the PRESIDENT, he did not think that that would be the inevitable consequence of the postponement of the discussion. With the information they should receive, the labours of the Committee would be greatly facilitated, and a satisfactory decision on the subject would be materially promoted. On the other hand, if this Bill went into Committee now, without the information that was desired, MR. MASSEY did not see at what conclusion the Committee could arrive.

HIS HONOUR the LIEUTENANT GOVERNOR believed there were already voluminous papers which might be put before the Select Committee. If, however, the debate were postponed for one month, the chances were strong that there would be no legislation at all on the subject during the present session. His own opinion was that legislation was urgently required, and that the expected reports could easily be laid before the Committee, if the time for the consideration of the Bill were extended to two months.

His Excellency THE PRESIDENT said that enquiries were then going on in half the districts of the Panjab, and there was no legal authority for such enquiries and for the decision of the points that were constantly arising.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF's amendment was then put.

The Hon'ble SIR WILLIAM MUIR wished to state the reasons which should induce him to vote against this motion. From the explanation furnished by his Hon'ble friend the Mover of the Bill, he was now satisfied that the measure had in a general way the approval and concurrence of Sir Donald McLeod. And that, taken in connection with the full and elaborate discussion which had been referred to by his Hon'ble friend the Lieutenant Governor of Bengal, and which he (SIR WILLIAM MUIR) had had the opportunity of carefully perusing on a former occasion, persuaded him that there did exist ground for referring the Bill to a Select Committee. Ample opportunity would still be given to opinions from the Government and others in the Panjab, on the Bill being published. He deprecated the delay which would ensue if an opposite course were followed, as settlement operations were being pushed forward in the Panjab, and therefore the question pressed for early solution, and it was of the deepest importance that the uncertainty at present prevailing should be set at rest.

The Council then divided—

AYES.	NOES.
His Excellency the Commander-in-Chief.	The President:
Hon'ble Mr. Taylor.	His Honour the Lieutenant Governor.
Right Hon'ble Mr. Massey.	Hon'ble Sir W. Muir.
Hon'ble Major General Sir H. Durand.	" Mr. Brandreth.
" Mr. Shaw Stewart.	
" Mr. Skinner.	
" Mr. Steuart Gladstone.	
" Khwaja 'Abd-ul-ghani.	
" Mr. Cockerell.	

So the amendment was carried.

Minute of the Lieutenant Governor of the Panjab on Tenant Right and the proposed Bill.

No. 65-128.

FROM

C. U. AITCHISON, ESQUIRE,

Officiating Secretary to Government, Punjab

and its Dependencies.

To

SIR R. TEMPLE, K. C. S. I.,

Secretary to Government of India,

Foreign Department.

Dated Lahore, 13th February, 1868.

REVENUE DEPARTMENT.

SIR,

IN reply to your letter, No. 140, dated 30th April, 1867, I am directed to forward, for submission to His Excellency the Viceroy and Governor-General in Council, copy of a Minute recorded on the subject of tenant-right in the Punjab by the Hon'ble the Lieutenant-Governor, with the annexures noted in its 13th paragraph.

2. The Minute fully sets forth the measures which were taken by the Lieutenant-Governor to give effect to the views expressed by His Excellency the Governor-General in the enclosure of your letter, and which resulted in the preparation of a Draft Bill for submission to the Legislature.

3. The remarks of the Lieutenant-Governor on the Bill introduced into the Legislative Council by the Hon'ble Mr. Brandreth will be separately forwarded at an early date.

I have the honor to be,

Sir,

Your most obedient servant,

Offg. Secretary to Government, Punjab.

MINUTE

ON TENANT RIGHT, AND THE PROPOSED BILL

RELATING THERETO.

First introduction of Settlements into the Panjab on the same general principles laid down in the North Western Provinces.

When the Cis and Trans-Satlaj Provinces were in 1846 annexed to the British territory; and formed into two Divisions, with their Head Quarters respectively at Amballa and Jalandhar; Settlement operations were set on foot—in the former, in the first instance, under Mr. Wynyard—in the latter under Mr. Christian—and these officers, as well as those subsequently added, were instructed generally to adopt the system established in the North Western Provinces as their guide.

Which however, as respects relations of landlord and tenant, began at an early date to be called in question.

2. In 1849, the rest of the Panjab was annexed—and Settlement operations were gradually extended to these. It then speedily began to be felt by many, that the principles thus introduced, or at all events the construction that had been put upon them, in so far as related to landlord and tenant, were here unsuitable—and after the province had been constituted a Chief Commissionership; and a Financial or Revenue Commissioner appointed—Mr. George Edmonstone; the officer who first held the latter post; set on foot enquiries, to determine what changes should be introduced. He was unable, however, so to analyse the replies received as to elicit from them some fixed principles on which to base our future proceedings—and he left the file as a legacy to his successor; with an avowal that the question was an exceedingly complicated and difficult one, and the matter did not appear to him as yet to have reached so matured a stage, as to be ripe for action.

Mr. Edward Thornton, as Commissioner, did much to place matters on better footing; as regards his own Division especially.

3. No systematic effort to form a revised Code, founded on the usages of the people, was in consequence then made. But from time to time, principles more or less important, were authoritatively enunciated—and Mr. Edward Thornton, in particular, then Commissioner of Rawulpindi; a most thoughtful and judicious officer, who had acquired, in the North Western Provinces, a large experience of Settlement duties; did a great deal towards putting matters on a more satisfactory footing, in his own Division—and bringing to the notice of the superior authorities, the points in which he considered alterations to be called for. It was in connection with his representations, that a declaration was elicited from His Excellency the Viceroy, then Chief Commissioner of the Panjab, conveyed in a letter from the Secretary dated 11th December 1855; that "it is the nature, quite as much as the length of occupancy, which entitles a cultivator to privileges"—and that Settlement Officers must "endeavour to learn thoroughly the local customs of their respective districts, and the opinion of the agriculturists."

4. In that document, a doubt was expressed whether 12 years' occupancy had been generally accepted, as conferring on a tenant hereditary rights—as no rule to that effect had been expressly laid down. But a perusal of the extracts from 14 Settlement Reports, given by Mr. Prinsep as Appendix No. VII of the 1st series of papers published by him, shows, I think conclusively, that this test was very generally adopted; especially in the earlier Settlements; in supposed obedience to the North West Provinces Rules; though against the convictions, in some cases, of the Settlement Officers themselves. So careful and sound an officer, for instance, as Mr. Robert Egerton, declaring that "the rights of hereditary cultivators have been entirely created under our rule—under the Sikhs, the proprietor had always the right of ousting a tenant, whenever he chose"—and a very large majority of our ablest officers, both at that time and subsequently, concurring with him, more or less completely, in this opinion—of which Messrs Temple and Cust afford notable instances.

Occupancy for a period of 12 years appears to have been very generally accepted, in the earlier Settlements, as conferring the right of perpetual occupancy.

5. This Appendix, No. VII, is, in my opinion, well deserving the perusal of all, who wish to satisfy themselves of the course that has been pursued in the Panjab; and the causes which have led to the existing state of things. It will be seen from it, that not only were hereditary cultivators largely created on the above ground—but that when thus created, they were, in most Settlements, declared entitled to pay in cash, instead of in kind, as had previously been the usage beyond the memory of man—and that a large number were moreover exempted from the payment to the landlord of anything whatever, in the shape of rent, beyond the Government demand and public cesses. Many Settlement Officers, however, modified the practice, according as their enquiries satisfied them that an alteration was necessary—but this was left, in a great measure, to the judgment of each individual officer—and these judgments necessarily differed greatly.

As well as the right of paying in cash, instead of in kind.

While many cultivators were exempted from payment of any rent in excess of the Government demand.

6. Whatever were the principles followed in each case; the Settlement Reports which have been submitted from time to time, have supplied a large mass of facts and opinions, of great value—and these have, in their turn, elicited the views of the Government on many points. Matters have thus gradually progressed towards a much more matured stage—and in 1860 the whole subject was taken up, with his wonted energy, by Mr. Cust, who was then officiating as Financial Commissioner—and who has done more than any other individual, to systematize those parts of the Panjab administration; both Revenue and Judicial; which had previously been more or less in a transition state. In a letter No. 909, dated 15th October 1860, he submitted a draft Code, to define the rights of landlords and tenants, which he had himself prepared—together with copious prefatory remarks

The Settlement reports, submitted from time to time, supplied much valuable material and opinions—and in 1860, Mr. Cust, as Financial Commissioner, took the matter up systematically — submitting a proposed Landlord and Tenant Code.

and numerous important documents bearing on the questions involved. The subject appeared too vast and intricate for the Panjab Government to deal with authoritatively—nor, indeed, did Mr. Cust himself desire or expect this—but the above letter and its accompaniments were printed and circulated—and copies are forwarded herewith, for reference if desired.

Mr. E. Prinsep, Settlement Commissioner; being strongly convinced of the necessity for large alterations in the existing record; set extensive enquiries on foot by means of Panchayats.

7. Amongst our Settlement Officers, none had more keenly felt the necessity for a radical change in the relations between landlord and tenant, and the correction of what had been erroneously laid down at the first Settlement, than Mr. Edward Prinsep—who, as Deputy Commissioner and Settlement Officer of Syalkot, had submitted one of the most remarkable and original Settlement Reports that has ever been published—and in 1863 was appointed Commissioner of Settlements for the Amritsur Division—and accordingly, on taking charge, he set on foot an extensive system of enquiry; chiefly by means of Panchayats and large assemblies of landlords and tenants combined. The character and extent, however, of these enquiries; and the changes in the existing record which they involved; created considerable alarm in some minds—and the Supreme Government accordingly issued warnings, on several occasions, that great care should be taken in this matter—and its sanction secured for whatever was done.

A committee was convened at Lahore early in 1865, to consider the subject—whose report with a memo. by Lieutenant Governor and other papers, was submitted in September 1866.

8. The Financial Commissioner, in consequence, issued a circular dated 21st August 1863; calling for information and opinions in regard to the relations between landlord and tenant, and the mode in which these should be dealt with—and in January 1865, a Committee to enquire into the whole subject, was convinced by the Panjab Government, which was presided over by Mr. A. A. Roberts, then Judicial Commissioner. Mr. Prinsep had, in the meantime, printed a large mass of papers, containing the replies to the Financial Commissioner's Circular, the main results of his own proceedings; together with numerous other important documents—all of which papers were laid before the Committee. Somewhat later, a proposed Bill, for revising Act X of 1859, was received from the Supreme Government, with a letter No. 596, dated 1st August 1865—calling for opinions, as to its suitableness for introduction into this Province—and finally, in a Memorandum dated 13th September 1866, I recorded my views upon the whole subject—which, with the Report of the Committee, Mr. Prinsep's papers, and some other documents, was submitted to the Supreme Government in a letter No. 397, dated 15th September 1866.

The Supreme Government in reply directed, on the 30th April 1867, that further enquiries should

9. This was replied to by a letter from the Foreign Secretary, No. 140 of the 30th April 1867, giving cover to a Minute by His Excellency the Governor General of the same date. In that Minute, a call for further evidence and

expression of opinions on certain points was directed; with a suggestion that it might be expedient to entrust the decision, in whole or in part, to a Committee similar to that which had assembled at Lahore two years previously—and in the letter accompanying it, I was directed to give effect to the views of the Governor General in the manner therein laid down.

be instituted, and a fresh Committee convened.

10. A Circular was accordingly issued to all Commissioners, dated 29th May 1867—forwarding to them 8 questions on the principal points noticed—and requesting them to reply to these questions themselves; and to invite replies from the more experienced of their English and Native subordinates—as well as "from some of the more intelligent members of the Native non-official community." The replies, when received, were abstracted by Captain W. Davies, Deputy Commissioner of Shahpur, and Captain Waterfield, Settlement Officers of Gujerat,—who were, at the time, present at Murree, and were detained on special duty for the purpose—and the abstract prepared by them, with the original replies themselves, were submitted to a Committee composed of Mr. Roberts, Financial Commissioner, as President, with Mr. E. L. Brandreth, and Mr. Thornton, Secretary to Government, as Members—who prepared a rough Draft of a Bill for disposing of the whole subject.

Enquiries were accordingly made—and on receipt of replies, a Draft Bill was prepared at Murree.

11. As, however, a Committee, similar to that of 1865, could not have been conveniently assembled at Murree—and it appeared on all accounts proper that persons of various classes, and of different views, should consider this Draft Bill, previous to its submission to the Supreme Government; it was made over, on the 8th November 1867, to Mr. Brandreth, who was then about to leave for Calcutta, to resume his seat in Council; with suggestions on certain points, and a request that on reaching Lahore, he would preside over a Committee to consider, and if necessary revise, the proposed draft. This Committee was constituted as shown in the margin. Of the Officers nominated, Mr. Lyall was unable to attend—and Mr. L. Saunders, Settlement Officer of Lahore, was accordingly substituted for him.

E. L. Brandreth, Esq., Comr. of Rawalpindi, President.

Members:
Mr. Forsyth, Commissioner of Jalandhar.
Mr. Prinsep, Settlement Commissioner.
Mr. Aitchison, Officiating Commissioner of Lahore.
Lt. Col. Young, Deputy Comr., of Gurdaspur.
Mr. Lyall, Settlement Officer of Kangra.
Mr. Blyth, Deputy Commissioner of Montgomery.
Jaishi Ram, Extra Assistant of Lahore.
Mohammad Hayat Khan, Ex. Asst. attached to Setlt.
Agha Kalb Abid, Extra Assistant of Amritsar.
Mohammad Sultan, ditto of Gurgaon.

Which was submitted for consideration, and any needful revision, to a Committee assembled at Lahore.

12. The revised Bill, prepared by the above Committee, was submitted to this Government with a letter dated 20th November, (12 days subsequent to the date of letter constituting the Committee,) together with some re-

This Bill, as revised by the above Committee, and subsequently by himself, has been now introduced by

Mr. Brandreth into Council.

marks by the Committee, and dissents of most of its members. Owing, however, to delays in printing; which appear at present to be quite unavoidable at Lahore; these documents did not reach me until after a Bill, further modified by himself, had been laid by Mr. Brandreth before Council. With reference to a remark made by him, during the discussion on this Bill; I think it right to state, that the expression employed in the letter of the Secretary, Mr. Thornton, when forwarding to him the Bill prepared by the Murree Committee, was as quoted in the margin. The reservation made in this passage, I regard as of the very first importance—and making this reservation, I was quite willing that the draft should be accepted as the basis for further deliberations—though from the time occupied, these deliberations must have been of a very summary character.

"Assuming the power of conditional ejectment of hereditary tenants to be withheld from land-owners; His Honor approves generally of the provisions of the Draft Bill, but, reserves to himself the right of expressing his views upon the subject more fully hereafter."

The papers laid before the Committee and their proceedings are now submitted.

13. I have entered into the foregoing detail, as it is desirable that the Members of Council should be enabled readily to inform themselves, to some extent, of the several stages by which the present position has been reached. I now proceed to express my views on the subject generally, and submit the documents detailed in the margin, which comprise all that has passed of an official character, since receipt of the letter from the Supreme Government. The Financial Commissioner and Commissioner of Settlements, it is understood, desire to submit memoranda explanatory of their respective views—but these, to save time, will be forwarded direct. The two Bills now submitted, I may observe, have been virtually superseded by the Bill now before the Council; and although the Murree Bill essentially forms the basis on which the others have been framed; there are essential points of difference—which, however, it would serve no good purpose now to dwell upon.

1st. Circular to Commissioner, No. 2, dated 29th May 1867, with 8 questions to be answered.

2nd. Abstract of replies to questions prescribed by the above, with selected replies given in full.

3rd. Bill prepared by Murree Committee.

4th. Letter to Mr. Brandreth, No. 649, dated 8th November 1867, forwarding Bill with remarks and questions.

5th. Reply from Mr. Brandreth, with revised Bill and Committee's replies, and dissents of members.

And these documents appear to me to supply sufficient information to admit of immediate legislation.

14. In Mr. Prinsep's dissent, the passage appears, which I have quoted in the margin—and several of the members have urged that at least on some of the points legislation be deferred, until another Committee has been appointed, and further enquiries made as to the feelings and wishes of the people. It must be borne in mind, however, that the replies now submitted form in fact a sequel to the very full enquiries made, and documents published, by Mr. Prinsep himself—

"The members were generally of one mind, that the facts placed before them" (in the replies to Government Circular) "really amounted to nothing—the evidence consisted merely of opinions of officers."

all of which are already before Government—and I myself entirely concur in the opinion expressed in the annexed extract from translated dissent of Mahammad Sultan, Extra Assistant, one of the members, in which Mr. Brandreth also appears virtually to agree. It may be, no doubt, that on particular points, a closer scrutiny of Native opinion may be deemed desirable—but I do not think it is possible, under existing circumstances, or practically necessary, to collect more reliable information than has now been supplied, to guide the Legislature in determining the general course which legislation should follow.

"A set of 8 questions were circulated to the various officers and chiefs of all the districts; and their opinions have been taken. These opinions are more valuable than any which a new Commission can elicit, and ere this, Committees of the people have also been convened to discuss this subject. If a new Commission be appointed; nothing will result from it except confusion and diversity of opinion."

While the replies, especially to the 8th of the questions put by the Panjab Government, show how urgently legislation is required.

15. To those who consider that the existing state of things is sufficiently satisfactory for practical purposes, and doubt, therefore, whether further legislation is now required —I would earnestly suggest a careful perusal of the replies at least to the 8th of the questions put by the Panjab Government; which for facility of reference, I have transcribed in the margin. For many years past, the conviction which has urged Mr. Prinsep so persistently and warmly to urge the necessity for a change—the conviction, viz., that the existing state of things was rapidly undermining all good feeling between the most important classes of the agricultural population—has strongly impressed itself on those of our officers, who are most careful to enquire into the feelings of those about them—and as I deemed it most essential, that a distinct avowal of the impressions entertained on the point, should be elicited; I had the question put.

"8. State how the operation of our system thus far has affected the relations between tenants and proprietors; especially as regards the friendly or unfriendly feeling existing between them—giving by way of illustration, any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what cause is this mainly attributable."

Indicating as they do, how antagonistic is the feeling which has arisen, in many parts, between landlord and tenant.

16. In para. 16 of Mr. Cust's prefatory remarks to the proposed Tenant-right Code submitted by him in 1860, he observed that—"At annexation, the hereditary cultivator required protection—it is now the proprietor who is practically ousted." In Sir Herbert Edwardes' Annual Revenue Administration Report for 1862-63 on the Amballa district; where our system has been longer in force than anywhere else; the annexed remarks occur—and by looking over past records, numerous passages, pointing to the same conclusion, might be adduced. But with the answers to the above query, now supplied in a connected form, this is not necessary. These replies

"Para. 32. Nothing seems to me more marked, with regard to our settlement operations in this neighbourhood, than the dissatisfaction of the proprietary body at the status we have given to hereditary cultivators. To allude to the subject in a knot of villagers, is to fire a mine—and I fear that the prospect alluded to by Captain Tighe, of great national development, will only embitter the matter."

are almost unanimous in declaring that great and general dissatisfaction exists. Some opinions are expressed very decidedly and warmly. But none is perhaps more likely to carry weight, than that of Râja Sir Sâhib Dyâl—who remarks*—" No kindness on the part of the proprietors, and no respect on the part of the cultivators, remains—and much litigation has taken place." This very estimable gentlemen; who was lately himself a Member of Council; is from his years, his experience, and his position, in the very best position for forming a correct judgment on the point—and those who know him will not be disposed to attribute to him a tendency to advance unfounded assertions—or to use exaggerated language.

Somewhat the same feeling appears also to exist in the North West Provinces.

17. In the North West Provinces, our Revenue system has been much longer in operation than in the Panjab—and having occasion to pass through portions of those provinces, in the end of 1866 and beginning of 1867, on my way to and from the Darbâr at Agra; the endeavour I made on my route to ascertain the feeling existing on this point, led me to the conclusion that the same dissatisfaction prevails there as in the Panjab—but more fully developed, and modified in some particulars. As an instance, corroborative of this impression, I may mention that on my sending for perusal to Mr. H. D. Robertson, late Magistrate and Collector of Sahâranpur—a gentleman of much intelligence, and experienced in Settlement duties—some of the papers which had been published in the Panjab on this subject; he replied to me, on the 13th January 1867, in the terms which I have transcribed in the margin. This gentleman, it will be observed, was a strenuous advocate of the exaltation of the cultivator at the expense of the landowner. Yet this is the state of matters he describes as having resulted from our procedure. If correctly described; it appears to me to be a state which it is impossible to regard with satisfaction. And it remains for the Legislature to determine whether the obliteration of distinctions between the landlord and tenant, which he advocated, is a desirable measure, or the reverse. That the principle in the abstract will be seriously approved, I do not for a movement believe—and His Excellency the Viceroy, in para. 11 of his Minute, has unhesitatingly condemned it.

" It seems to me that the large mass of the people resent the distinctions that we have drawn so absolutely between tenants and landlords.

" Our legislation is destroying the respect formerly entertained by the lower classes in this country for the Zamindar—and the general tendency of tne lower classes is to become intensely democratic, even more so than in England.

" Perhaps we are going too far in the opposite direction (that is, towards limiting the right of tenant occupancy) in these Provinces, even for our future security—possessing as we do, landlords without power; and a dissatisfied tenantry, possessing that power; but no inducement to maintain order or the existing state of things."

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* See replies from Amritsar.

So that success there cannot be alleged, with a view to perpetuating the same system here.

18. In thus referring to the North Western Provinces, however, I would guard myself against being supposed to apply to them the arguments which I have used in respect to the Panjab. I have no right to do this; nor have I any such intention—and I am well aware that the circumstances of the two provinces greatly differ—but I have thought it right to show why I am not prepared to admit that success there can be adduced as an argument for perpetuating the same system here.

Want of power to raise rents has been one great cause of dissatisfaction; and still more so, the compulsory conversion of rents in kind into cash rents; a matter in respect to which the position heretofore taken up by us, should be receded from.

19. One very essential cause of the general dissatisfaction existing in the Panjab, has undoubtedly been, the inadequacy of the rents heretofore demandable from tenants of nearly all classes—and this indicates the great urgency that exists for legislation on this point. Another cause—and perhaps the one that has led to more aggravation than any other—is the arbitrary mode in which the grain payments which had heretofore been the universal usage, have been in many parts converted by us into cash payments; in the case of all but the most ephemeral classes of tenants. Mr. Cust remarks, in para. 23 of his letter above quoted—"This sudden abolition of grain rents has been a mistake. We are returning to them on the best managed estates in England. Our settlements must break down, if we throw in such hard subsidiary rules; and march too far ahead of the circumstances of the country." In the "Statement of objects and reasons" annexed to Sir W. Muir's Bill to amend Acts X of 1859 and XIV of 1863, the passage here transcribed is quoted from a letter of the Sudder Board of Revenue, proposing certain provisions. It is no doubt true, that many inconveniences result from levy of rents in kind, or even by appraisement of crops. But nevertheless, I am of opinion that no Government has any right—and least of all a foreign Government like ours—to abolish, *proprio motu*, a custom long cherished by the people; however inconvenient. And although it is now too late, to undo all that has been done in this respect; I would urge, that not only should all arbitrary conversions be, for the future, peremptorily prohibited—but that every reasonable facility be afforded in individual cases, to a return to grain payments; where they are urgently desired by the land-owner, and not strongly objected to by the tenant. I may mention also that in the Narwar Pargannah of Benares—a district in which agriculture is probably as far advanced as in any district of this Presidency; levy of rents in kind was, while I held charge of the district, the uniform usage—and any deviation from it would have been resisted, I believe alike by land-lord and tenant. It may be presumed therefore, that there are circumstances, under which grain payments may be preferable to cash ones.

"The system of rents in kind, or by appraisement of crops, though suited to a rudimental state of society, is accompanied by many evils, which, in the progress of civilization, render it a matter of high expediency to promote the substitution of money rents."

But underlying all other causes has been the grant to hereditary tenants of a right of perpetual occupancy.

20. But whatever* may be the special causes which have led to discontent, I consider it to be quite indisputable, that the one great cause which underlies them all, has been our conferring on tenants of long standing a right of perpetual occupancy. Sir W. Muir's "Statement of objects and reasons" above referred to, contains at its commencement, the passage marginally quoted.* But the enquiries here made, certainly do not show that such "general consent" as is spoken of in this passage, can be correctly attributed to the Panjab.

"There is a very general consent, that in the Native state of things, the resident ryot, simply as such, is throughout the continent of India, possessed as a rule of the right of hereditary occupancy, at the customary rates of the vicinity."

Which is shown by the documents now and heretofore submitted, to be opposed to the ideas and usages of the people of this province, however unfrequent evictions may have been.

21. In paras. 19 and 20 of the report of the Lahore Committee, convened in 1865, it was remarked that as shown by Mr. Prinsep, such eminent and well informed officers as Messrs. Temple, Cust, Robert Egerton, R. H. Davies, E. L. Brandreth, and others, agreed that "the position of an hereditary cultivator, having right of permanent occupancy, had no existence whatever in Sikh times, and was a creation of the last Settlement." Also that "the opinion of influential native gentlemen, and of experienced native revenue officials"—"was to the effect that before the last Settlements, proprietors both possessed and exercised the power of evicting their tenants, &c." Mr. Cust, when in a letter dated 9th August 1860, he submitted as Financial Commissioner the Gugaira Settlement Report, observed in his 17th para.—"Captain Elphinstone remarks that hereditary tenants are the creatures of our system. I may add that they are perhaps our greatest mistake"—and now, in the replies to the 2nd question of the Panjab Government, quoted in the margin, the great majority, while admitting that evictions were not common, attribute this entirely to the circumstances of the time—the scarcity of cultivators, compared with the demand—the arbitrary interference of Sikh rulers, with a view to increasing the revenue—and the depreciation in the value of landed property hence resulting. Out of 17 individuals who have replied; 15 only, of whom 9 are Natives (2 Extra Assistants and 7 Tehseeldars) make statements pointing to an admission on the part of the proprietor, that the tenant had any constitutional right to retain the land, against the wishes of the owner. The remainder consider, with Col. W. McNeile, Commissioner of Delhi, that the infrequency of evictions "resulted solely

"2. So far as your observation and knowledge extend, have you found it to be the fact, that proprietors (before annexation) refrained as a rule from evicting tenants who had cultivated for long periods—say twenty years or two generations? and were such tenants, as a matter of fact, led to look forward with confidence to the unmolested enjoyment of their holdings."

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* Since the above was written, Sir W. Muir has pointed out to me, that owing to a mistake in the office, the "Statement of objects and reasons" sent to me, was that at first drawn up by him, but afterwards much altered. He has now sent me a copy of the Statement, as ultimately adopted, which does not contain the passage above quoted and accordingly in the copy of that document printed in this volume the initial portions of both versions have been printed in parallel columns. D. F. McLEOD.

from considerations of his own interest, on the part of the proprietor—and where he required the land for his own use, he did not hesitate to evict."

Or however the constraining influence of the Sikh rulers may have prevented landlords from asserting what they considered to be their rights.

22. It is no doubt true, that except where the people were too strong to be trifled with; tenants were, under Sikh rule, retained in their holdings, or new ones introduced by the officials of the day, in opposition to the wishes of the proprietor—but I cannot think that this affords sufficient grounds for our legislature to stereotype such a state of things—or to accept, as an established principle, that which has been the result of violence and wrong—however tenderly we may be bound to deal with the status of individuals thus established, however wrongfully. When borne down by an over-ruling power, and in times of anarchy, populations will resignedly endure much, which they will indignantly resist, when enforced by the rigor of settled laws—and in this matter I am myself most fully satisfied, that the right of the proprietor to dispose of his lands; however it may have remained in abeyance; has never ceased to be acknowledged and will never be contentedly surrendered. The vigorous Jats of the Mânjha and Mâlwa, the Pathâns of the frontier, and the hardy races of the Salt range and adjacent tracts, have not yet, I believe, as a body, recognized the fact that they are really to be precluded from the use of their lands should they require them—and, on numerous occasions, most bitter protests have been made to me on the subject, where an individual has been made to feel, by the action of our Courts, that such is indeed the law. As time progresses, the value of land will increase, and the requirements of its owners will multiply—when this acerbity of feeling cannot but increase likewise; and it is difficult to foresee what will be the result, if a corrective be not now applied.

Rights which will continue to be cherished and asserted with the greatest vehemence whenever the opportunity may occur; though their value may have been for a time extinguished by official action.

23. It has been urged by some, that proprietary rights have acquired reality and value solely by the action of our Government—and that we have the right to dispose, as we may think best, of what we have thus created. But I do not believe that we can thus deal with rights in land, without injustice and imminent danger. If any suppose that proprietary rights in land, however depressed or kept in abeyance, have ceased to be recognized and tenaciously cherished; I would refer them to the 3rd part of Mr. Prinsep's printed papers—where, at the 8th and following pages, he goes pretty fully into this question. It was pointed out by Lord Metcalfe many years ago, in a passage which has been often quoted, how after one or more generations had been driven out of a village in India, by violence or oppression; succeeding generations would return, on the first available opportunity, to resume possession—each family occupying the precise plot vacated by its sires—and we may rest assured, that there is nothing in regard to which it is more imperative on a foreign Government,

desiring peace, prosperity, and permanence, to show the utmost consideration and tenderness, than proprietary rights in land.

24. Having thus far urged the claims of the proprietor; I proceed to remark on those of the cultivator—for whom I consider it to be no less imperative, that we exercise and enforce great consideration. I believe that justice demands this—and no thoughtful person can contemplate the evils which have resulted in Ireland and elsewhere, from cultivators having been left entirely at the mercy of their landlords; without desiring that the existence of such a state of things may be averted if possible from India. But the mode in which this just consideration can be most appropriately shown; is not, in my opinion, by authoritatively maintaining cultivators for ever in the occupancy of lands desired by their owners for their own purposes—and hence in my Memo. of the 13th September 1866, I wrote as follows :—

It does not however necessarily follow, that no tenants are to be considered privileged, or to meet with any consideration. And it is accordingly urged, on behalf of hereditary and favored tenants; that their right of occupancy be declared to hold good, and their eviction be prohibited, until adequate compensation shall have been paid to them by the landlord.

(Para. 7). "I do not think that any one, who is free "from pre-conceived prejudices, can peruse the accompany-"ing documents without arriving at the conviction, that "there is an all but universal feeling on the part at all "events of the more intelligent classes of the people, "throughout this province, against perpetuity of occupancy "rights, on the part of even highly favored tenants—but that "there are nevertheless undoubtedly large classes of these, "whose title to special consideration is as universally "acknowledged. The conclusion to which I have been in "consequence irresistibly drawn is; that an award of per-"petuity is not the proper remedy for any wrongs inflicted "on members of these favored classes—and that the just "claims of all (with a few exceptions to be hereafter ex-"plained) may be most appropriately met; after precautions "have been taken to guard against needless evictions; by "awarding pecuniary compensation, commensurate with "his claims, to any privileged tenant who may be deprived "of his holding."

(Para. 8). "It appears to have been heretofore generally "assumed; that when superior tenant right is proved, a "title to permanent occupancy is necessarily established—"and this view has been adopted in the enactments of our "legislature. But I know not on what this assumption has "been based—and believe that much of the diversities of "opinion which have prevailed on the subject, would have "been reconciled; if some measure, less irremediable than "an award in perpetuity, had been devised—or one more "capable of adaptation to the varying circumstances of "different cases, than an inexorable law of perpetual incum-"bency can ever be rendered."

(Para. 18.) "My own opinion is very decided; that, "while great and permanent dissatisfaction, as well as "serious obstruction to progress would result from declar- "ing the occupancy of the ordinary hereditary tenant to be "permanent—this principle of granting compensation on "withdrawal of land; if prudently applied; would operate "most beneficially—and be readily accepted by nearly all. "No sudden or startling change would thus be introduced— "the rules adopted would take effect but gradually; and "under circumstances which would enable the people "themselves, in a great measure, to apportion the compen- "sation in each case, in such mode as may appear to them "appropriate. Seeing also how constant is the tendency in "India to excessive sub-division; and how rapid the progress "of the country promises to be in population, as well as in "agricultural, manufacturing and commercial activity; it ap- "pears to me to be a matter of no small moment, that the "transfer" (of capital) "from agricultural to other pursuits, "in the more densely peopled parts, should be as much as "possible facilitated."

A principle which has been heretofore recognized as suitable, by some of our best officers—and is very generally assented to in the papers now submitted.

25. I endeavoured there to show that some of the best of our Panjab officers have heretofore, to a greater or less extent, advocated and acted upon the same views. Colonel Lake, Financial Commissioner, in para. 27 of a Memorandum accompanying his letter of the 8th March 1865, wrote in the terms here transcribed—and from a Minute by Sir William Muir, dated 15th October 1866, of which a copy has been sent to me, I gather (see paras. 17 to 19 and 26) that he is not opposed to the adoption of the principle of compensation—though opposed to the conditions of which I proposed to require the fulfilment previous to ejectment. In the replies now submitted to questions 5 and 6, it will be seen that while those conditions are, for the most part, in like manner objected to; the general principle is regarded with favour—and I have been assured by a member of the Lahore Committee, that its members generally likewise so regarded it—though the principle in question was but partially adopted in their Bill. From the replies in question, (see supplementary ones) it will be seen that Mr. Lyall, Settlement Officer of Kangra, had acted upon it, before he was aware that it had been urged by the Panjab Government—while Mr. Forsyth, Commissioner of Jalandhar, and a member of the Committee, expresses the opinion that the principle of giving compensation on ejectment, is "quite indispensable—in fact the one on which the whole arrangement would turn." It would have been better if the enunciation of this principle had been embodied in a separate question, apart from the

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The difficulty and uncertainty connected with determining the amount of compensation, has been adduced as a serious objection—but does not appear valid.

26. It has been objected, however, that the amount of compensation to be awarded, would always be uncertain and difficult of ascertainment. This must no doubt be to some extent admitted. But as the only alternatives appear to be; either, on the one hand, to authorize summary eviction at the pleasure of the landlord; or to fix arbitrary conditions, which shall secure a tenant who fulfils them from eviction under any circumstances—I cannot but think that either of these alternatives; though securing certainty, and facilitating the disposal of such cases, must be productive of much greater evils than the uncertainty of legal adjudication. Judging from the careful and enlightened consideration bestowed on suits concerning land, by our Chief and High Courts;* who must be the ultimate arbiters and regulators of this matter; I believe that they will be fully equal to the occasion—though it may be advisable for the legislature to fix a maximum and minimum of compensation, as a guide—and where deficiencies become apparent, it will be incumbent on the Government to raise the efficiency of our Courts to such standard as the requirements of the time may call for.

Nor does the other objection which has been urged, that our Courts will be swamped by the number of cases.

27. The possibly overwhelming number of such cases that may arise, has also been urged as a serious objection. But I cannot concur with those who think that our Courts would be swamped by claims of this description—as I am fully convinced, that with the immediate prospect of having to pay for eviction, applications to evict on the part of landowners will be rare—and when it shall have become generally understood that payment will be enforced, I think it likely that the great majority of such cases will be settled by the parties themselves out of Court. I proposed that, to assist the Courts, arbitrators should be appointed. Sir W. Muir (see para. 31 of the above Minute) prefers the appointment of a Commission. To this I would offer no objection—either course might be adopted at the discretion of the Court.

And although no such usage has heretofore existed amongst the people; yet it appears to be one which we may appropriately introduce.

28. His Excellency the Viceroy further objects to the adoption of this principle (see para. 7. of Minute of the 30th April 1867) on the ground that no such usage existed prior to British rule—and there can be no doubt, that under Native Governments; although payments for improvements, &c., were doubtless occasionally made; there was no general admission, that tenants of long standing were on eviction

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entitled to compensation. The tenor of most of the replies received, however, as well as my own observation, lead me to believe that the justice of the principle, if judiciously enforced, would be generally recognized. Under Native rule almost everywhere, the interests of the strong were more regarded than those of the weak—and hence, harse and even unjust usages, in respect to the latter, will be found to have existed—which, although myself an earnest advocate for adherence to existing usage, I think it is incumbent on our Government to remedy as far as may be practicable without injustice. The present case appears to me to be one in point.

While the adoption of a similar principle has been advocated even for Great Britain and Ireland.

29. Since my last Minute on this subject was written; I have met with passages in recent publications, which lead me to believe that the principle which I have above advocated, would not be regarded with disfavor in England. Thus the Quarterly Review, when commenting on publications recently issued on the subject of tenant right in Ireland; uses the language marginally quoted—while the report of a Select Committee appointed to enquire into the laws and customs in different parts of England and Wales, as between landlord and tenant, &c., contains the annexed remarks; and although these remarks refer more immediately to compensation for improvements; yet they admit of wider application. I would by no means desire to limit the payments to the value of improvements effected by the tenant; though these should undoubtedly be included—but would apply the principle to the purchase of the prescriptive title virtually created by long residence or other causes.

"We do *not* think the permanent existence of a class of hereditary tenants, would be a good in Ireland any more than it is in India—but it is necessary first to recognise such rights; and then to allow and encourage the purchase by the landlord of the tenant right, or by the tenant of the freehold. If any think this policy contrary to political economy, we commend them to the study of John Stuart Mill."

"11. That this wider system, of compensation to the outgoing tenant, seems to be highly beneficial to agriculture, to the landlord and to the farmer; to lead to a great increase in the productiveness of the soil; and to extended employment of the rural population.

"12. That the benefit arising from this system appears to be gradually becoming more extensively known and appreciated—and the system itself seems to be finding its way into other districts than those where it has hitherto been in force."

(See Leoni Levi's Annals of British Legislation for 1866, page 472.)

The conditions by which it was formerly proposed to restrict the power of eviction, having been shown to be unadvisable, are no longer urged.

30. The conditions which I formerly proposed, the fulfilment of which should be declared necessary, before a proprietor could be held entitled to purchase the rights of an hereditary tenant; have been condemned as too vague and uncertain for practical purposes; not only by His Excellency the Viceroy and Sir William Muir; but by the great majority of those who have given replies to question 5 of the accompanying series—and further objections have been urged to some of them by Captain Davies and others. On further reflection, I quite admit the validity of these

objections—and accordingly withdraw my former proposals on this point—though I am still of opinion that at least a year's previous notice on the part of the landlord of his intention to evict, should be obligatory—on all other points, it must, I think, be left to the Courts, aided by Commissions or arbitrators, to appraise, (between such maximum and minimum as may be prescribed) the value in each case of the privilege withdrawn from the tenant; after taking into consideration all contingent circumstances tending to enhance or diminish the amount of compensation fairly due.

31. On the other hand, as the proposed Bill contains provisions for largely increasing the existing power of enhancing rents—and an increase of this power is, in my opinion, most urgently required—I think it will be right to confer on the hereditary tenant, the right of demanding that his prescriptive right of occupancy be purchased by the landowner; if he (the tenant) be unwilling to pay the enhanced rent demanded of him—as it appears to me that some such check against excessive enhancement will prove very salutary and necessary—and that it would be quite defensible in principle.

But in the event of rent being enhanced; and the tenant being unwilling to pay the enhancement; he should be allowed the right of demanding that he shall be bought out.

32. His Excellency the Viceroy and Sir William Muir have in their Minutes objected to a rule being laid down, that a cultivator who has once been proved to be a tenant-at-will, can never by length of occupancy become an hereditary tenant. It will be seen from the replies to question 7 of the accompanying papers, that they are almost unanimous in advocating the enforcement of this rule—which has already been in force for some years in the Panjab, and has also been adopted in the Bill before the Council. But I entirely agree with Sir William Muir, in the opinion expressed in para. 19 of his Minute; that "it may be doubted whether even in the case of tenants-at-will; where they do not hold merely from year to year, or in virtue only of a terminable lease; some right of compensation for improvements should not be recognized"—and I would even go further; by allowing the Courts discretion to award, on eviction, compensation for the loss of such prescriptive title as may have accrued from long occupancy; where they might consider that sufficient cause was shown—as I think it is impossible to ignore, with justice, the hardship which eviction under such circumstances must cause—or to disregard the sympathy which must be felt for a cultivator of long standing, who without any default on his part, is summarily thrown penniless on the world. The adoption of such a principle is urged by Mr. Lyall and some others, in the accompanying replies—and if this be conceded; I trust that all objections urged to the adoption of the rule will be removed—though the claim of such a cultivator should never be held to equal that of a cultivator recorded as hereditary.

While even in the case of tenants-at-will of considerable standing, some compensation might be allowed at the discretion of the Courts.

A right of perpetual occupancy is however urged on behalf of a specially privileged class—of whom a large number are ousted proprietors.

33. On one other point, His Excellency the Viceroy has expressed a doubt, whether it will be necessary or advisable to accede to a proposal made by me in my former Minute—viz: the distinguishing a particular class of cultivators, as having a superior status to the ordinary hereditary cultivator. But if the latter be declared liable to eviction on payment of compensation, I apprehend that His Excellency will approve of the distinction proposed. In para. 17 of his Minute, Sir William Muir has assumed that none of the class intended by me were "originally proprietots in the proper sense of the term"—but, in point of fact, a very large proportion of the specially privileged classes alluded to in para. 9 of my former Minute, fall essentially within that category; though this was not expressly stated by me. Many of them have been degraded from the status of full proprietors, from having been subdued by other races; to whom the successive waves of conquest which have been so frequent in this province, have given the ascendancy—others have been forced by the heaviness of the Government demand, or their own incompetence, to succumb and give place to more industrious or thrifty races—while not a few have been supplanted by the arbitrary action of the officials of the time. In many cases, they have entirely disappeared from the scene—but in very many they have succeeded in maintaining possession of their lands in whole or in part—and mention of such will be found in Colonel Lake's reply to queries of the Financial Commissioner, published at page 7 of the 2nd Appendix of Mr. Prinsep's landlord and tenant papers, as well as elsewhere.

Also those cultivators, who were associated with the proprietary body on the first establishment of the village and jagirdars or ex-jagirdars of standing in respect of the land they cultivate. But by no means all who have broken up waste.

34. Where such exist, there can I think be no doubt that special consideration should be shown to them—and I believe that their eviction, except under very special circumstances, would be generally regarded as unseemly and unjust—very much the same may, I think, be said in regard to those who settled in the village, at the same time and in association with the proprietary body, though not admitted to full proprietary rights; not however including stipendiaries or menials—as also of Jagirdars of standing, whether their jagirs have lapsed or remain; who in addition to enjoying the Government share, have themselves cultivated lands within their jagir. I formerly urged in respect to this specially privileged class, that those included within it should not be liable to any enhancement of rent, save with reference to a fall in the value of money—but I am disposed to modify this proposal—to which I will refer when considering the proposed Bill. In the dissents of some of the native members of the Committee, and elsewhere, it is urged that all who have broken up waste land, or sunk wells, should also be included in this specially privileged class, and exempted from liability to eviction under any circumstances. But in this opinion I can by no means concur.

35. The last point to which I deem it necessary to advert, is the character of Mr. Prinsep's proceedings. His Excellency the Viceroy has understood me to be of opinion (see para. 2 of Minute of 30th April 1867), that "Mr. Prinsep was in error when, at the revision of settlement, he undertook to make a wholesale enquiry into the rights of all hereditary tenants already recorded as such"—and that "whenever and only whenever the correctness of the former record is impugned at the revision of settlement, an enquiry should be instituted"—from which I fear that I have heretofore failed clearly to indicate my real opinions. Referring to the details given in the foregoing paragraphs—the errors of principle in the records of the earlier settlements, which have been constantly urged by our best officers, reported to the higher authorities, and admitted by them—I have never regarded those earlier records as liable only to alteration by formal suit—but have considered the whole question of the principles to be followed in defining the position of tenants, as under enquiry, and in a transition state. The institution of a revision of settlement appeared to me to afford the opportunity required, and the only one which could occur, for having those principles thoroughly scrutinized, and adjusted in the mode prescribed by law and existing rules—viz. by careful ascertainment of the pre-existing usages of the people—and I have accordingly availed myself of it for this purpose.

Deprecates being considered to have disapproved of Mr. Prinsep's proceedings; or regarded our earlier settlement records, as having a character of finality.

36. That this course, prescribed by Regulations VII of 1822 and IX of 1833, and urged in 1855 by Sir John Lawrence as Chief Commissioner, has not heretofore been adequately carried out; Mr. Prinsep has, I think, conclusively shown—and the errors which have thence resulted, are commented upon in full, in the papers which accompany, as well as in those which have been heretofore submitted. When we first obtained possession of the Panjab, matters were in as unfavourable a position for the formation of a correct record, as they could well have been. I dwelt on this point in para. 5 of my former Minute—and need not further remark on it here—but it cannot be matter for surprise if a record prepared under the circumstances which I have endeavoured to describe, have failed to secure that amount of correctness, or attain to that perfection, which should give it a character of finality. With judicial awards Mr. Prinsep has not attemped to interfere—and he has had little or no occasion to do so, in the case of Gujerat; of which the settlement was made under the wise and careful guidance of Mr. Edward Thornton, after it had been some years under British Rule, during which more than one summary revision of the first settlement had been made. But where principles had been avowedly adopted in our earlier settlements, which have been largely called in question; there he deemed full enquiry to be necessary—and had he not made the enquiries which he has made, it may be deemed certain that these discussions,

As these were prepared, for the most part under circumstances altogether adverse—and involved principles so largely called in question; that it seemed indispensable to have such enquiries made as would admit of disputed points being authoritatively set at rest—and these were accordingly authorized.

which it may be hoped will now lead to a final settlement of the matter, would never have arisen.

So that Mr. Prinsep, if in error, is not the party really responsible.

37. My own sympathies and convictions have been with Mr. Prinsep from the first—and I have supported him throughout—so that if he has erred; the blame must rest with me rather than with him. I felt certain myself, that the great bulk of the landlords would at once impugn the record, on its real character and future operation being made fully apparent to them—and if their ignorance or apathy witheld them from spontaneously coming forward; I did not consider this to be a valid reason for allowing a record to be accepted and confirmed, which was believed to be erroneous in principle. It would no doubt have been more in conformity with rule, if I had submitted the whole matter for the decision of the legislature, before Mr. Prinsep's enquiries commenced. But the deliberations and discussions which have been now in progress for 3 years, show that the data for enabling the legislature to dispose of the matter, were not then available—and I deemed it on every account the wisest course, as most likely to lead to practical results, to allow him to complete his enquiries, and report them.

He has been charged with having evinced undue bias on the side of the landlord—but this is by no means admitted; and he appears to have earned by his zealous exertions a title to the acknowledgments of Government and the people.

38. It has been alleged by some who are opposed to his views, that Mr. Prinsep has evinced a bias incompatible with free enquiry—but this has never been proved—and is in my opinion wholly irreconcileable with the ardent love of justice and sympathy with all classes, which are his prominent characteristics. It is alleged too, that enquiries are entrusted to native subordinates, who are not in a position to be thus trusted—but these subordinates are all selected men; who have much at stake, and are supervised and controlled by conscientious English officers. All has been done in the most open and public manner; in the closest possible communication with all classes of the population interested. A written record of the status awarded to each individual cultivator, has been given him—and every opportunity afforded him for appeal. I should have been glad if Mr. Prinsep had been less peremptory and exuberant in urging his views—but I have entire confidence in the trustworthiness of his work—a sincere admiration for his earnest spirit—and a firm conviction that he is entitled to the warm acknowledgments, alike of Government and the people.

Remarks on Mr. Brandreth's Bill will be submitted separately.

39. I have been called upon to submit my views in regard to the several provisions of the Bill now before the Council. This I will do separately—but I have been desirous of thus recording in a form not encumbered with the details which that involves, my opinions as to the general principles which should be followed, and the grounds on which they are based—in order that I may contribute my

share, so far as in me lies, towards the final determination of those principles—which have now been so long under consideration and discussion—and the authoritative decision of which is now so urgently desired.

10th February 1868.

D. F. McLEOD,
Lieutenant Governor Panjab.

TENANT RIGHT IN THE PUNJAB.

The introduction of the Tenancy Bill.

The circumstances which more immediately led to the introduction of Mr. Brandreth's proposed "Punjab Tenancy Bill" in Council are as follows.

Mr. Prinsep's report on the errors committed at the first Settlement.

Mr. Prinsep, soon after he was appointed Commissioner of Settlements for supervising the revised Settlements of the three districts comprising the Umritsur Division, reported that very numerous and grave errors had been committed at the first Settlements in the matter of recording "hereditary cultivator." In his first letter, No. 196 of 28th April 1863, he "expressed a strong con-"viction that there were very few tenants who during Sikh times could come "under the definition of 'hereditary cultivators' in the sense we attach to this "position, and simply for this reason that it is universally admitted that the "land-owner had the right to evict any tenant, and could do so at any time; he "enquired whether the position of the so called hereditary cultivator" (Mouroosee) "who has been recorded as such in the old Settlement papers is in any "way to be re-opened," and he solicited early instructions as to any new principles which might be laid down for the determination of such cases.

Its results.

This letter has given rise to endless enquiries, Committees, and discussions; but no definite instructions have ever been issued, and in the meantime the Tenant-Right investigations, and all the other parts of the revised Settlement of the Umritsur Division, have been, long since, brought to a close; and operations have not only been commenced but have very nearly been completed in three other districts.

The proposal of the Bill to confirm former entries.

It is at this stage that Mr. Brandreth's Bill has been introduced to enact (Section 5) that "every tenant whose name appears in "the records of a Regular Settlement, sanctioned by the "Local Government, prior to the passing of this Act, as "having a right of occupancy in land which he has continuously occupied from "the date of entering his name in such Settlement, &c., &c., shall, unless and "until the contrary be proved, be presumed to have a right of occupancy in the "land so occupied."

Before entering into the question of the nature or legality of Mr. Prinsep's proceedings, it may be as well to consider what would be the effect of this Section of Mr. Brandreth's Bill if passed into Law, on Mr. Prinsep's proceedings.

The changes effected by the present Settlement.

Part III of Mr. Prinsep's printed Papers shows the changes that have been made in the entries of the former Settlements in regard to hereditary cultivators in the Umritsur Division. Using Mr. Prinsep's own expressions, the results are as follows :—

1.	Holders for two generations, agreed to by both,		1,346
2.	Special contracts, do. do.,		6,919
3.	On fixed leases for periods,		21,393
4.	Tenants-at-will by admission, Claims to rights rejected by assessors,	8,771 3,831	12,593
5.	Made proprietors,		1,253
6.	Voluntarily thrown up their holdings,		1,935
	Total declared to have no rights of occupancy,		45,439
	Found at revision to have rights of occupancy,		15,547
	Grand total of hereditary cultivators at former Settlements,		60,986

It appears that a change from the entry of the former Settlement has been made in 45,439 instances. But as in classes 1, 2, the greater part of 4 and 6, the changes were by mutual agreement, or "voluntarily," I conclude that these, numbering 18,975 cases, would not be affected by Mr. Brandreth's or any other Bill, as no objection can I imagine be urged to the amendment of the old record in these cases.

Perhaps too, exception would not be taken to the 1,253 cases in which tenants have been "made proprietors."

Mr. Brandreth's Bill would therefore not affect 20,228 cases, but it would render nugatory the proceedings of the present Settlement in the remaining 25,211 cases, in which a change has been made from the former record in the Umritsur Division alone.

Are Mr. Prinsep's proceedings authorized by Law?

Obviously the first point to be decided is, whether Mr. Prinsep's proceedings are totally uncountenanced by Law, or whether they are in whole or in part consonant to any Law on the subject of making Settlements. Even if there be no semblance of Law in Mr. Prinsep's preceedings, I think perhaps the legislature would wish to be satisfied either that the faith of Government was in any way pledged to the former Record which Mr. Prinsep had set aside, or that great wrong had been done; and that Mr. Prinsep had erred as much in favor of the land-lord as he says the first Settlement did in favor of the tenant, before it passed a *post facto* Law to abrogate proceedings which have been countenanced, if they have not been formally permitted by the Local Government and the Financial Commissioner of the day, and which were brought to a close upwards of two years ago.

The despatch of Lord Dalhousie with regard to Panjab Revenue Law.

In his despatch No. 418, dated 31st March 1849, to the President and Members of the Board of Administration, which has, I believe, under the Indian Councils Act, the force of Law, Lord Dalhousie directed that—"The four short "printed Circulars of the Sudder Board of Revenue North Western Provinces, "and the Pamphlets published under Orders of the Lieutenant Governor," were to form the Revenue Code of the Punjab. The Pamphlets are of course

the Directions for Settlement Officers, and the Directions for Collectors compiled by the then Lieutenant Governor of the North Western Provinces, the late Mr. Thomason, and subsequently published by him in one volume as Directions for Revenue Officers.

The finality of the decision of the Settlement Courts.

Lord Dalhousie's despatch above mentioned was followed by an important correspondence as to the power of the Civil Court to take up and investigate cases decided after full enquiry by the Settlement officers. The Governor General, in Sir Henry Elliott's letter No. 1602, dated 1st September 1849, sanctioned the proposal of the Board, which I must observe was confined to the Cis and Trans Sutlej States Divisions, and is only applicable by implication to the rest of the Punjab, to the effect that "the decisions of the Settlement " officers under their authority be considered final (subject to the usual Revenue appeal) in all cases decided on their merits."

The "Directions" and their force.

The "Directions" still constitute the chief Revenue Hand-Book of the Punjab, as well as of the North Western Provinces, and by them and by the exposition they contain of the Law on the subject of making or revising Settlements, modified it may be by the orders of the Government of India of 1st September 1849, must the legality of Mr. Prinsep's proceedings, in altering the record of the former Settlements, and the finality of his decisions and of the decisions of his subordinates, be, I imagine, judged.

The correction of the Record was a duty of Settlement Officers.

In Appendix XIX of the Directions for Settlement Officers will be found a Circular Order of the Sudder Dewanee Adawlut North Western Porvinces, dated 31st January 1845, which rules "that the whole tenor of Regulation VII of 1822 " vests officers conducting Settlements with authority to correct the errors " of former Settlements." Colonel Lake, in his letter No. 336, dated 26th May 1865, expressed the opinion that Financial Commissioner's Book Circular 33 of 1860 had modified the procedure in the Punjab—but I apprehend that, that Circular and the previous Circular No. 43 of 14th December 1858 in no way affects Settlement Officers or circumscribes their powers. Those Circulars were intended to prevent Deputy Commissioners in the Punjab doing that which all Collectors in the North Western Provinces are empowered and required to do by a Notification of 12th September 1858 (Appendix XXV of Directions for Collectors,) viz., "to " complete the record of rights in land, which should have been made at the " time of Settlement, and to correct the existing record whenever it is found " to be at variance with fact" during the currency of a Settlement.

Mr. Prinsep's procedure was consequently legal.

If my view is right, and I beg to observe that I expressed this opinion in my letter No. 1,179, dated 5th May 1865, forwarding the report of the Committee which sat in the previous month of May, Mr. Prinsep's proceedings, in altering the record of the former Settlement where it was found to be wrong, are not opposed to law or practice as they prevail in the North Western Provinces, and as they are expounded in Mr. Thomason's Directions.

Section 5 of Mr. Brandeth's Bill, on the other hand, is not only not in keeping with the existing law, which it would virtually repeal, but necessarily is opposed to a great principle on which that Law is founded as set forth more particularly in the Resolution of Government of 1st August 1822, and in the numerous other valuable documents published as Revenue Appendices to the Report of the Select Committee of the House of Commons in 1832.

Section 5 of the Bill is opposed to the principle on which the existing law is founded.

The policy of the Government which have administered Indian affairs in the present generation is described in the Memorandum (prepared at the Indian House) of the improvements in the administration of India during the last 30 years, and dated 11th February 1858, as follows—" Their object has " been, as new provinces were successively brought under British rule, to *ascer-* " *tain accurately* the persons and classes of persons, who by law or usage had " a beneficial interest in the land, and the nature, and extent of the beneficial " interests of each," &c., &c. But surely there can be no accurate ascertainment of such facts if, at a revision of Settlement, the errors of the former Settlement are not allowed to be corrected. Section 5 of Mr. Brandreth's Bill can in no wise be allowed to stand.

Mr. Prinsep's proceedings.

I will now offer a few observations on the nature of Mr. Prinsep's proceedings and as to the necessity of legislative interference in regard to them. I do not know that I can do better than repeat the opinion which I expressed in my letter No. 1,179, dated 5th May 1865, already referred to.

The Punchayat system insufficient.

" I do not consider that the procedure heretofore adopted by Mr. " Prinsep, of a Punchayat for a whole village, is sufficient. " In each case either party should have the option of " challenging the assessors.

As is the proposed Code.

" 6. I also cannot think that Mr. Prinsep's Code, purporting to define " all possible relations between landlord and tenant, is " sufficient to embrace the great variety of interests which " prevail in the Umritsur Division as elsewhere. The fea- " tures are so varied, and often so minute, that it would be impossible without " the risk of great injustice, to lay down general rules or enunciate abstract " principles.

General rules and principles undesirable.

" 7. Sixteen years ago, there was neither landlord nor tenant in the " Punjab, according to our acceptation of those terms; " but there were numerous co-existing interests in the soil. " Unquestionably numerous mistakes occurred at the first " Settlement in recording those interests, and we should take advantage of the " revision of Settlement for perfecting the record; but the less recourse we have " to general rules and principles, or to authoritative decisions, and the more " we encourage the people to adjust and to define their own rights, the better."

Farther enquiry and experience.

From the time I expressed that opinion three years ago, when I was Judicial Commissioner, until the month of October last, when I had become Financial Commissioner, I had no further concern with this discussion. I was then unexpect-

edly called upon, in conjunction with Mr. Brandreth and Mr. Thornton, the Secretary to Government, to frame a Bill, which we did on the data placed before us, and it was then referred to another Committee at Lahore. The subject has ever since continued to receive my careful consideration. I have, moreover, since I have become Financial Commissioner, had the opportunity of examining on the spot the work of Mr. Prinsep's subordinates in the four districts of Kangra, Goojrat, Lahore, and Goojranwalla, in which Settlement operations are still in progress, and I have marched through the three districts of Umritsur, Goordaspore and Sealkote, which compose the Umritsur Division, in which operations have been closed for upwards of two years.

Has confirmed Financial Commissioner's opinion of Mr. Prinsep's procedure.

The result is, that while I see no reason to alter the opinion which I expressed in January 1865 as to the nature of the procedure which Mr. Prinsep should have been required to pursue, especially in regard to the option to either party to challenge assessors, or, what would have been better still, the employment of arbitrators;—while I think the enunciation of general rules and principles or any attempt to codify the relations between landlord and tenant should have been avoided;—while I deprecate the Buttala and Umritsur Committees, which were assembled in May and June 1863 before the adjudication of the cases between landlord and tenant had commenced in more than one Pergunnah;—I nevertheless see no reason whatever to disturb that which has been done in good faith, and has, so far as it goes, been well done, at any rate until it shall appear that some other remedy than that of an appeal to the Civil Court, (which I presume is at present open to all who may be dissatisfied,) is required. I do not think that the 25,211 cases decided in accordance with the verdict of assessors can be considered either complete awards, or decisions on their merits. There was, no doubt, a confronting of parties; their statements were recorded in each case, generally in the hand-writing of the presiding officer; and the opinions of the assessors were obtained, and the decision given with the utmost publicity. Still I do not think that the proceedings were so full and complete as is intended by Section XIV, Regulation VII of 1822, or by Sections 5 to 8 Regulation IX of 1833 (see para. 13 of Directions for Settlement Officers); or by the correspondence of 1849, which would give finality to the decisions of Settlement officers on the merits. And I would not consider them anything more than a superior description of Registration, unless it be declared in any Act now to be passed that they are awards in the sense of Regulation VII of 1822, and may be contested by a Regular suit within three years from the passing of such Act.

The appeals have been few, but a very large number of regular suits were instituted in the Settlement Courts.

The appeals to the different Appellate Courts, including my own Court, have, no doubt been, comparatively few. Possibly there may have been some misunderstanding on this point in the Umritsur Division, as I found to be the case in the Goojranwalla District in November last; where however it is now fully understood that, in accordance with the practice which prevails in the North Western Provinces, and which is prescribed in Regulations VII of 1822 and IX of 1833, there is an appeal to each successive supervising Court; but it is a significant fact that in 4,011 cases, tenants who were dissatisfied with the mode of procedure of the Settlement officers instituted regular suits before those same officers, and obtained decrees upholding the status of the former

Settlement. There were, no doubt, fully as many regular suits in which the claims were rejected, though these are not discriminated by Mr. Prinsep; at any rate it is clear that many thousands of regular suits were instituted before the Settlement officers, and decrees were obtained in no fewer than 4,011 cases. It might have been supposed that the nature of the majority of the awards under which "protection," as it is called, has been given for 3, 5, 7 or 10 years, and even for longer periods, would operate to prevent either regular suits or appeals for the time. But this does not appear to have been the case as regards regular suits, and I am given to understand that some hundreds of further regular suits to contest these Settlement awards have been instituted and disposed of in the ordinary Civil Courts since the Settlements were brought to a close. I repeat then that there is no reason for interference with Mr. Prinsep's proceedings for the general correctness of which he pledges himself, and which are now being and can still continue to be rectified by the institution of regular Civil suits. Only in those comparatively few cases in which a complete award has been given or a decision pronounced upon the merits, would further litigation be restrained in the spirit of Lord Dalhousie's despatch of 1st September 1839, because in such cases the Settlement officer exercises the full powers of the Civil Court.

Mr. Prinsep compelled to modify his views regarding beneficial occupancy.

Mr. Prinsep has not proved correct in the almost total denial of beneficial occupancy with which he set out in 1863. He now finds that there are upwards of 15,000 such tenures in the Umritsur Division alone. Still it is proved by the admissions that were made in 8,771 other cases before Settlement officers exercising Judicial powers, that the occupants in these cases were tenants-at-will, and that mistakes had been made at the first Settlement in those cases. I suppose it must also be admitted that the entries of the first Settlement were not correct in these cases, numbering 8,265, in which the occupants agree to hold only for two generations or for shorter periods. In all these cases, and in 3,188 others in which those who were formerly recorded as tenants have been found to possess proprietary right, or in which the occupants have voluntarily thrown up their holdings, making a grand total of 18,975 cases, the alteration of the first Settlement record was inevitable. Of course opinions may and will differ as to the justice or expediency of altering the record in the remaining 25,000 cases, which, as represented by the Settlement Commissioner, on the refusal of the parties to come to terms were summarily referred to assessors. But judging from the absence of excitement or disquietude in those districts in which these cases occurred, and through which my predecessor Colonel Lake, His Honor the Lieutenant Governor and I myself have frequently passed, both during the time that these investigations were going on, and since they have been concluded; judging also from the total silence of the Commissioners and Deputy Commissioners whose duty it would have been to report any wholesale injustice or wrong which they might have reason to think had occurred during the revision of Settlement, and which they could scarcely have failed to hear of if it had been perpetrated, I should say no extensive injustice, if any at all, had been done.

The awards of the village juries may be held to be generally equitable, but do not go far enough.

And if I may argue from the great superiority of Mr. Prinsep's revised Settlement in every respect over the first Settlement, and the general trustworthiness of the rest of his proceedings, I cannot hesitate to believe that these awards of his quasi-juries are not an inequitable adjudication of the extremely nice and difficult question of beneficial occupancy in disputed cases.

But it may, and I think would, be right, to go somewhat further than these awards go. The assessors have in 21,393 cases given protection for various periods, of from three to ten years or more, shewing unmistakeably that consideration is called for. I would propose that not only in these cases, but in every case in which a change has been made from the record of the first Settlement, except in those cases in which either by admission or by a judicial decision the tenant was found to be a mere tenant-at-will a money compensation, to be determined either by arbitration or commission, be paid to the outgoing tenant in addition to any protection which may have been afforded either by award or by mutual agreement during the revised Settlement. Further than this, and the repeal or modification of Clause 13, Section XXI, part 1 of the Punjab Civil Code, which prescribes that the rent of the hereditary cultivators cannot be enhanced within the term of Settlement, legislation would perhaps be premature.

The objectional or unnecessary any parts of the proposed Bill.

The whole of part II of Mr. Brandreth's Bill should certainly be omitted. Parts III, IV, V and VI might, perhaps, after careful revision be enacted, though I am by no means sure that they are, as yet, required. We should, I think, do no more than remove any such restriction as that contained in the Panjab Code, to which I have alluded—reserving of course the right of those tenants who may be declared at Settlement entitled to hold at fixed rate. Further than this, the less interference there is on the part of either Revenue Officers or Courts of any sort in agricultural as well as other contracts the better. With regard to Part V, I am not aware of anything to prevent a tenant having a right of occupancy to dispose of such right to his landlord, or, with the consent of the latter, to purchase, his enfranchisement. Still I would legislate, as suggested above, for the disfranchisement of holdings which may at first Settlement have been declared hereditary, by payment of a money compensation in addition to the awards of assessors. The holdings, generally, whether of proprietors or tenants having a right of occupancy, are so small, and both are becoming so much smaller, as each incumbent leaving sons dies, that time must bring a remedy. Mr. Prinsep's printed paper III shows that tenants having a right of occupancy hold on an average only 4 acres each. From another return, in a separate reference, I find that the holdings of proprietors in the Umritsur Division are only on an average 6 acres. Beyond this we need confine ourselves for some time to come to an accurate ascertainment of the rights and interests of all persons who have a beneficial interest in the soil, and are careful to limit the Government demand to the smallest amount consistent with the public necessities, everything else will find its own level.

A Tenant Code cannot yet be prepared.

We are only one step nearer the formation of a Tenant Code than we were when this controversy commenced; and that not from what has been said or written on the subject of tenant-right, but what Mr. Prinsep and his subordinates have done. We must first get a distinct view of things as they are, before we attempt to legislate. Mr. Prinsep's revised Settlement gives us a much more accurate picture of tenant-right in the Umritsur Division as it exists than we had before. Still, the 25,000 cases referred to assessors have yet to settle down, and perhaps some of them to be formally adjudicated, before we can know the exact relations of the different persons who have co-existing interests in the soil, and be able to draw up a Tenant Code, even for this limited, though important part of the Punjab.

Lastly, I would observe that Mr. Prinsep appears to have under-estimated the good that was effected at the first Settlement, and that he has taken an exaggerated view of the consequences of the errors which were necessarily committed in a work of such magnitude and difficulty. No doubt we have now a much more accurate record of rights. Not only is the staff of officers stronger, but they are more experienced; while the people at large are more keenly alive to their interests and better informed as to the object and scope of our proceedings.

Mr. Prinsep's views are somewhat exaggerated.

An accurate record of rights is not an impossibility.

I am not of those who despair of the possibility of making an accurate record of rights, if not at a first, certainly at a revised Settlement.

Lord Moira, in his Minute of 21st September 1815, would not venture upon a survey "of so minute a nature, as that is should exhibit the cultivation and name of the occupant of every beegah of land," and yet the same nobleman enactad Regulation VII of 1822, under which such a survey, which is the basis of every Settlement, is now made with an accuracy and a perfection which are truly astonishing. If but a sufficient staff of Judicial Officers could be appointed to each Settlement, a very accurate record of rights could I believe be drawn up. The difficulty experienced in former days, in working Regulation VII of 1822, was to find Officers competent for the duty. We have now numbers of Officers, both European and native, fully qualified for the work, but financial considerations still keep the Settlement staff below the requirements of so great, and difficult, and important a work.

But it is hardly possible to lay down new principles for determining occupancy rights.

As to Mr. Prinsep's request for new principles for the determination of cases of beneficial occupancy, I do not think it safe, if it be possible, to comply with it.

I would not attempt to describe this or any other tenure more precisely than is done in the Regulations, in the "Directions," and in the Chief Commissioner's letter No. 1010, dated 11th December 1855, where it is said that "it is the nature quite as much as the length of occupancy which entitles a cultivator to privileges." Such a tenure does exist in the Punjab. It is the province of the Settlement Officer to discover who possess beneficial interests in the soil, and what those interests are.

A. A. ROBERTS,

Financial Commissioner Punjab.

Lahore, 6th March 1868.

MEMORANDUM BY THE LIEUTENANT GOVERNOR OF THE PUNJAB ON MR. BRANDRETH'S PUNJAB TENANCY BILL.

Remarks only apply to Sections requiring alteration.

In the following remarks, those sections and clauses only of the Bill will be referred to which should, in my opinion, be modified, omitted, or added to.]

Section 2.

To Section 2, I would add the following clause:—[unless, as regards the letter, on application being made to Chief Court that Court shall be of opinion that the decree in question, if passed by an inferior Court, is materially opposed to the principles laid down in this Act, and has not been carried into effect in such manner, and for such length of time, as to have conferred prescriptive right; in which case that Court shall have authority, if it see fit, to direct a revision by the Court which originally passed the decree, or such other Court as it may deem preferable.]

Section 3.

In Section 3, I would substitute for the words—[both a heritable and a transferable interest]—used in the clause relating to a tenant, the words—[a substantive proprietary right]; and in the same Section, where the meaning of "land" is described, I would insert after the word—[subject] the additional words—[or which may hereafter become subject].

Section 4.

For Section 4, I would substitute the following:—

Section 4.—The following rules for regulating the position of tenants having rights of occupancy shall be observed by all officers employed on Settlement duties, and by all Courts of Justice:—

(1).—The same as Section 4 of the Bill, adding at its close the words—[subject to the conditions specified in Section 8, clause 2, and other Sections of this Act applying to tenants of his class.]

(2).—Every tenant who is the decendant or representative of a person, who settled in the village, at the same time and in company with the members of the proprietary body as *bonâ fide* tenants, and not as mere artizans or menials, shall be deemed to have the same right.

(3).—Every tenant, who is, or has heretofore been, Jagirdar of the village, or of part of the village in which the land cultivated by him is situated, and who has continuously occupied that land for a period of 20 years or upwards shall be deemed to have the same right.

(4).—Every tenant who in any other mode has acquired an especially favored position, superior to that of an ordinary tenant having conditional right of occupancy, shall be deemed to have the same right. In this category will

be included all those who have acquired such a position, either by the action in time past of those in authority, by mutual agreement, or otherwise, and have maintained it till the present time; all who have been or may be declared, after judicial enquiry, to be "Malik-i-maqbuzah," "Malik adni," and such like; as well as all who, for two or more generations, have ordinarily paid to the Zamindars no rent in excess of the Government demand on their lands.

(5).—Every tenant who has proved, or can prove, that he has held the land now occupied by him from a period of 12 or more years previous to annexation, but who does not come under any of the classes indicated above, shall be deemed to have right of occupancy, subject to the conditions noted in Section 8, clause 1, Section 28, and other Sections of this Act applying to tenants of his class; provided that, if service of any kind have been required of him as an incident of his tenure, he continue to perform that service, or such other as may be substituted for it.

Section 5. Section 5 of the proposed Bill I would omit; and substitute the following :—

Section 5.—The above rules are laid down for general guidance in determining on claims to conditional right of occupancy; but as it is not possible to anticipate, in any general rules, all the possible causes that may or may not entitle a tenant to special consideration, it is hereby declared that an officer employed on Settlement duties is authorized, while preparing or revising the record of rights, if a case shall come before him for which the above rules do not appear to him adequately to provide, to adjudicate the claim in accordance with what may be established before him to be the existing usage, or in harmony with the opinions of the people, and in like manner, Civil Courts of Justice are empowered, at any time during three years after the revision of Settlement in the district to which the land belongs has been brought to a close, to adjudicate in the like manner a claim brought before it for rectification of an entry made in the Settlement record; provided the case have not been disposed of in the Settlement Department, or, previous to Settlement operations, in a Court of Law, after judicial enquiry.

Section 6. For Section 6, I would substitute the "explanation" given under Section 5 of the Bill, the commencement of the Section, however, being worded as follows :—

Section 6.—If any tenant, having right of occupancy in his land, shall have voluntarily exchanged the land, &c., &c., (as in the Draft Bill.)

Section 8. For the last two lines of clause (2), Section 8 of the Bill, I would substitute the words—[Settlement, he have established his right to be considered as falling within one of the classes described in the four first clauses of Section 4 of this Act.]

I would add also the following clause to this Section :—

Clause (3).—Within the above maximum limits, the Courts shall be careful to exercise a just discrimination, and award, in each case, such enhancement of rent as, with reference to the rates heretofore paid, the

rates paid for adjoining lands similarly circumstanced, and any specialities appertaining to the case itself, shall appear to them fairly demandable; and in the event of the tenant being unwilling to pay his rent at the enhanced rates awarded, he shall be at liberty to claim the privileges provided for in Sections 26 and 28 of this Act, according as he may belong to the one or the other of the two kinds of favored tenants respectively.

Section 9. To Section 9 I would add the following :—

Clause (4)—Or such increase of productive power shall have resulted from similar improvements made by the tenant himself; in which case, however, such share of the enhanced proceeds and no more, shall be allowed to the proprietor, as may appear to be equitable and in accordance with usage.

Section 17. To Section 17 I would add the following:—

[In the case, however, of a tenant-at-will of longer occupancy than a single generation, it shall be open to a Court of Law, in the event of such tenant claiming compensation or damages for ejectment, to award a moderate amount, to be paid to him by the Zamindar prior to ejectment; provided the circumstances of his case be such as, in the judgment of the Court, would render his eviction, without such compensation, a measure productive of undue hardship.]

Section 18. In Section 18, after the word [ejected] I would enter the words—[without compensation]; and at the close of this Section, I would add the words--[after the service of the first process in execution of decree].

Section 21. In Section 21 of the Bill, where Section seventeen is referred to, Section eighteen appears to be intended.

Section 24. In Section 24, for the words—[having a right of occupancy]—I would substitute the words—[coming under any of the classes described in the four first classes of Section 4].

Part V. The heading of Part V. I would alter, so that it should stand as follows :—

PART V.

Of compensation payable in the event of a tenant with right of occupancy vacating his land under certain conditions.

And for the 3 Sections of Mr. Brandreth's Bill included in this Part, I would substitute the following :—

Section 26. Section 26.—If the rent of a tenant falling within one of the classes described in the first four clauses of Section 4 be raised above the rent fixed at Settlement, he shall be at liberty to apply to the

Court for permission to purchase the proprietary title in his land, in lieu of accepting the proposed enhanced rate; and the Court shall be empowered, should there exist no valid reason to the contrary,* to award this privilege, in the event of the enhanced demand being insisted on. And should the amount of purchase money not be determined by mutual agreement, the Court shall further proceed to determine the amount, either by a commission or by arbitration, as may be deemed best; but such amount shall in no case exceed 20 years' purchase of the net profit, over and above the Government demand, which would have been derived by the proprietor from the land at the enhanced rates. In the event of the tenant paying down the amount thus determined, he shall be declared proprietor of the land. But if he be unable or unwilling to pay the amount, he shall be declared liable to pay the enhanced rate of rent.

Section 27.

Section 27.—Any such tenant having an heir entitled to succeed to his lands shall have power, &c., &c., (as in Section 27 of Mr. Brandreth's Bill.)

Section 28.

Section 28.—If a proprietor desire to take possession of lands occupied by a tenant of the class described in clause 5 of Section 4, the latter shall be entitled, if he have committed no default, to receive compensation by way of damages, to be paid prior to eviction. And if the amount cannot be determined by mutual agreement, the Court to which application may be made shall proceed to determine the amount, either by commission or by arbitration, as it may deem best. Such amount, however, shall in no case exceed 20 years' purchase of the average annual profits realized by such tenant, over and above the sum payable to proprietor; and on the latter paying down such amount he shall be put in possession of the land. On the other hand, if the rent of such tenant be raised at any time above what he has heretofore paid; he shall be at liberty to demand compensation, determined as above; but in no case exceeding 15 years' purchase of the average profits which would be still left to him at the enhanced rates; and on this amount being paid by the proprietor, the tenant shall vacate the land. Should the proprietor, however, be unwilling or unable to purchase, he must forego the proposed enhancement of rent.

I may here remark, as regards Section 28 of Mr. Brandreth's Bill, that I do not consider the right to plant or cut down trees to be a matter in regard to which it is necessary or desirable that the Legislature should authoritatively interfere.

Section 29.

In Section 29, I would introduce after the words [any tenant], in the fourth line, the words—[who does not come under any of the classes described in the first 4 clauses of Section 4]; and at the end of the Section I would add the words—[In the event of a tenant of any of the special classes above referred to refusing to make or to allow to be made any improvements desired by the proprietor, a Court of Law, to which application may be made by the proprietor, shall be empowered, if it see sufficient cause, to compel such tenant either to make the improvements himself, or to allow the proprietor to make them.]

* NOTE.—For example, if the enhancement should be awarded with reference to a fall in the value of money, or on any other grounds which would practically leave the tenant the same profits on his land as he derived from it at the time of Settlement, then this would afford a valid reason to the contrary.

Section 30.

Section 30 I would commence as follows :—

Section 30.—Every tenant of the above classes shall have authority to make such improvements as he may deem desirable, irrespective of the wishes of the proprietor ; and any other class of tenant, having a right of occupancy, &c., &c., (as in Mr. Brandreth's Bill.)

Section 31.

In Section 31, after the word [tenant] in the 9th line, I would insert the words—[if he have to vacate the land] ; and after the words—[shall be entitled]—the words—[in addition to any compensation by way of damages that may be awarded to him under the preceding Sections of this Act.]

Section 32.

In Section 32, for the words—[shall not take into consideration]—I would substitute the words—[shall take into consideration so much only as the proprietor may be shown to be fairly entitled to share out of].

Section 35.

I would exclude from mention in Section 35, as coming under the cognizance of Revenue Courts, claims under Sections 26, 27, and 28 of this Bill, as I think they may be most appropriately dealt with by the Chief Court and the Courts subordinate to it.

The prominent points on which the Lieutenant Governor dissents from the Bill.

From the foregoing remarks it will be seen that the prominent points on which I dissent from Mr. Brandreth's Bill are—

(1.)—That it fails to make distinctions between different descriptions of tenants with rights of occupancy,—a matter which is, in my opinion, of exceeding importance.

(2.)—That he does not base right of occupancy altogether on the grounds which I would desire.

(3.)—That he does not propose to introduce the principle of granting compensation by way of damages on eviction of tenants with rights of occupancy, which appears to me to be the only method by which the grant of right of occupancy can be rendered otherwise than arbitrary, hard, and injurious.

(4.)—That the rules he proposes to lay down are somewhat too stringent and peremptory, and do not leave to Courts of Law so much discretion as, in a question so surrounded by difficulties and uncertainties, and involving such great variety of circumstances as this, appears to me to be essentially necessary.

In the memorandum heretofore submitted by me, I have stated in some detail the grounds on which I base the proposals I have made; so need not recur to them here. But I would observe generally that the principle of granting compensation by way of damages on eviction is the one which lies at the

bottom of all that I have suggested, and is quite essential to the carrying out of my proposals generally; while I believe that, if this principle be admitted, the award of rights of occupancy will cease to bear that serious character in the eyes of the proprietary body which it undoubtedly does at present, and will at the same time ensure justice to privileged tenants. The other very essential principle involved in the Bill is the defining and enunciating clearly the right of proprietors to periodical enhancements, on sufficient cause being shown, of the rents of every class of tenant. This is a point of the most vital importance, and it is one in which I have proposed but little modification in the rules prescribed by Mr. Brandreth's Bill.

A form of revised Bill, prepared in accordance with the foregoing remarks, is annexed hereto.

20th March, 1868. (Signed) D. F. McLEOD,

Lieut-Governor.

A BILL TO DEFINE AND AMEND THE LAW RELATING TO THE TENANCY OF LAND IN THE PUNJAB.

[NOTE.—The passages included in brackets are those which it is proposed to omit from Mr. Brandreth's Bill: the proposed new matter is distinguished by being printed in italics.]

Preamble.

Whereas it is expedient to define and amend the law relating to certain matters connected with the tenancy of land in the Punjab; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title.

1. This Act may be called "The Punjab Tenancy Act."

Saving of agreement between landowner and tenants, and of decrees.

2. Nothing contained in this Act shall affect the operation of any agreement entered into between a land-owner and a tenant, or of any decree of Court under which a tenant holds—*unless, as regards the latter, on application being made to the Chief Court, that Court shall be of opinion that the decree in question, if passed by an inferior Court, is materially opposed to the principles laid down in this Act and has not been carried into effect in such manner, and for such length of time, as to have conferred prescriptive right; in which case that Court shall have authority, if it see fit, to direct a revision by the Court which originally passed the decree, or such other Court as it may deem preferable.*

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Land-owner."

"Land-owner" means any person entitled to receive rent, but does not include the Government, in cases where the Government is entitled only to the land-revenue, nor any mere assignee of land-revenue;

"Tenant."

"Tenant" means any occupant of land liable to pay rent therefor, who does not at the date of the passing of this Act possess [both a heritable and a transferable interest]—*a substantive proprietary right*—in such land, and includes the person from whom the land may have been inherited, or otherwise legally acquired;

"Rent."

"Rent" means whatever is payable on account of the use or occupation of land;

"Land." "Land" means land subject—*or which may hereafter become subject*—to a settlement, whether regular or summary, of land-revenue;

"Settlement Officer." "Settlement Officer" means any officer employed in making or revising a regular settlement of land-revenue.

PART II.

Rights of Occupancy.

Tenant who has lost proprietary rights otherwise than by forfeiture to Government.

[4. Every tenant who has at any time possessed proprietary rights in land continuously occupied by him, and who has lost those rights otherwise than by forfeiture to Government, shall be deemed to have a right of occupancy in such land.]

Section 4.—The following rules for regulating the position of tenants having rights of occupancy shall be observed by all officers employed on Settlement duties, and by all Courts of Justice:—

(1.)—*Every tenant who has at any time possessed proprietary rights in land continuously occupied by him, and who has lost those rights otherwise than by forfeiture to Government, shall be deemed to have a right of occupancy in such land, subject to the condition specified in Section* 8, *clause* 2, *and other Sections of this Act applying to tenants of his class.*

(2.)—*Every tenant who is the descendant or representative of a person who settled in the village, at the same time and in company with the members of the proprietary body as bona fide tenants, and not as mere artizans or menials, shall be deemed to have the same right.*

(3).—*Every tenant who is, or has heretofore been Jagirdar of the village or of part of the village in which the land cultivated by him is situated, and who has continuously occupied that land for a period of* 20 *years or upwards, shall be deemed to have the same right.*

(4).—*Every tenant who in any other mode has acquired an especially favored position, superior to that of an ordinary tenant having conditional right of occupancy, shall be deemed to have the same right. In this category will be included all those who have acquired such a position, either by the action in time past of those in authority, by mutual agreement, or otherwise, and have maintained it till the present time; all who have been, or may be declared, after judicial enquiry to be "Maliki-maqbuzah," "Malik adni," and such like, as well as all who, for two or more generations, have ordinarily paid to the Zamindars no rent in excess of the Government demand on their lands.*

(5).—*Every tenant who has proved, or can prove, that he has held the land now occupied by him from a period of* 12 *or more years previous to annexation, but who does not come under any of the classes indicated above, shall*

be deemed to have right of occupancy, subject to the conditions noted in Section 8, clause 1, Section 28, and other Sections of this Act applying to tenants of his class; provided that, if service of any kind have been required of him as an incident of his tenure, he continue to perform that service, or such other as may be substituted for it.

Tenant whose name is in settlement records, or who has occupied continuously for certain period.

[5. Every tenant whose name appears in the records of a regular settlement sanctioned by the Local Government, prior to the passing of this Act, as having a right of occupancy in land which he has continuously occupied from the date of entering his name in such settlement, or who, if no such settlement has been made, shall have occupied the land continuously for a term commencing not less than twelve years prior to the first day of April 1849, shall, unless and until the contrary be proved, be presumed to have a right of occupancy in the land so occupied.

The land-owner may rebut the said presumption by showing—

(1.)—That the entry in the said records was made in violation of the rules laid down by the settlement officer, as set forth in the official report or the records of the settlement; or

(2.)—That the tenant has voluntarily admitted before any settlement officer, or before any officer authorized to attest mutation of entries in the village record, that he is a tenant-at-will; or

(3.)—That, within the thirty years immediately before the institution of a suit relating to the right of occupancy, other tenants of the same class and holding under similar circumstances in the same or in adjacent villages (excepting tenants specified in Section three) have ordinarily been ejected from their holdings at the will of the land-owner; or

(4.)—That, on any other grounds which may satisfy a Civil Court, the tenant is only a tenant-at-will.

Explanation.—If the tenant shall have voluntarily exchanged the land or any portion of the land formerly occupied by him for other land belonging to the same land-owner, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as the land given in exchange would have been subject to if the exchange had not taken place.]

Section 5.—The above rules are laid down for general guidance in determining on claims to conditional right of occupancy; but as it is not possible to anticipate, in any general rules, all the possible causes that may or may not entitle a tenant to special consideration, it is hereby declared that an officer employed on Settlement duties is authorized, while preparing or revising the record of rights, if a cause shall come before him for which the above rules do not appear to him adequately to provide, to adjudicate the claim in accordance with what may be established before him to be the existing usage, or in harmony with the opinions of the people; and, in like manner, Civil Courts of Justice are empowered, at any time during three years after the revision of Settlement in

the district to which the land belongs has been brought to a close, to adjudicate in the like manner a claim brought before it for rectification of an entry made in the Settlement record ; provided the case have not been disposed of in the Settlement Department, or, previous to Settlement operations, in a Court of Law, after judicial enquiry.

When tenants not recorded as having right of occupancy shall have same rights as other tenants.

[6. Any tenant who at a regular settlement sanctioned by the Local Government prior to the passing of this Act was not recorded as having a right of occupancy, shall if in the opinion of the Court there is reason for believing that he would have been so recorded if he had preferred his claim at the settlement, have the same rights and be subject to the same liabilities as other tenants who were recorded in the same settlement as having rights of occupancy.]

Section 6.—If any tenant, having right of occupancy in his land, shall have voluntarily exchanged the land or any portion of the land formerly occupied by him for other land belonging to the same land-owner, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as the land given in exchange, would have been subject to if the exchange had not taken place.

No right of occupancy acquired by mere lapse of time.

7. No tenant-at-will shall be deemed to acquire a right of occupancy by mere lapse of time.

PART III.

Of Rent.

1.—*Enhancement.*

Liability to enhancement of rent.

8. Every tenant having a right of occupancy shall be liable to have his rent enhanced; but the rent of no such tenant shall be enhanced otherwise than in execution of a decree of Court made in accordance with the following provisions (that is to say):—

(1.)—In no case shall the rent payable by the tenant be more than eighty-five per cent of the average annual net produce which, in the opinion of the Court, the land is capable of yielding during a period of five years from the date of suit; and

(2.)—The rent payable by the tenant, shall not exceed seventy-five per cent. of such net produce if, before the institution of a suit for enhancement or the regular [settlement, he did not pay rent at any higher rate than that of the land revenue.]—*settlement, he have established his right to be considered as falling within one of the clauses described in the four first clauses of Section 4 of this Act.*

(3.)—*Within the above maximum limits, the Courts shall be careful to exercise a just discrimination, and award, in each case, such enhancement of rent as with reference to the rates heretofore paid, the rates paid for adjoining lands*

similarly circumstanced, and any specialities appertaining to the case itself, shall appear to them fairly demandable ; and in the event of the tenant being unwilling to pay his rent at the enhanced rates awarded, he shall be at liberty to claim the privileges provided for in Sections 26 and 28 of this Act, according as he may belong to the one or the other of the two kinds of favored tenants respectively.

Explanation.—These rates are laid down on the assumption that the land revenue and all extra cesses, such as Road Fund, Lumberdars' fees, Patwaris' fees, School Fund, District dak cess, and the like, are payable by the land-owner. If the land-revenue or any of the said cesses is payable by the tenant, the rate to which his rent may be enhanced shall be reduced by the amount so payable.

Suit for re-enhancement.

9. After a decree shall have been passed in accordance with Section eight, no suit shall lie for re-enhancement of the rent until the expiration of five years from the date of such decree, unless—

(1.)—A general revision of settlement shall have taken place in the meantime ; or

(2.)—The quantity of land held by the tenant shall be ascertained to be greater than the quantity for which he has paid rent previously to the institution of the suit ; or

(3.)—The productive power of the land shall have been increased by improvements of the description mentioned in Section thirty-three effected at the sole expense of the land owner ; or

(4.)—*Such increase of productive power shall have resulted from similar improvements made by the tenant himself; in which case, however, such share of the enhanced proceeds, and no more, shall be allowed to the proprietor, as may appear to be equitable and in accordance with usage.*

2.—*Rent payable by Tenant-at-will.*

Rent payable by tenant-at-will.

10. Every tenant-at-will shall pay such rent as may be agreed upon between him and the land-owner ; or, if no such agreement has been made, such rent as was payable for the land in the last preceeding year.

3.—*Abatement of Rent.*

Grounds of right to Abatement.

11. Every tenant having a right of occupancy shall be entitled to claim abatement of the rent previously paid by him on either of the following grounds, and on no others :—

(1.)—That the area of the land has been diminished by diluvion or otherwise, or proved to be less than the quantity for which rent has been previously paid by him ; or

(2.)—That the productive powers of the land have been decreased by any cause beyond the control of the tenant.

4.—*Remission of Rent.*

When Court may allow remission of rent.

12. Notwithstanding anything contained in Section ten or Section eleven, it shall be lawful for the Court, in making a decree for an arrear of rent, to allow such remission from the rent payable by any tenant as may appear equitable, if the area of the land in the occupation of such tenant be diminished by diluvion or otherwise, or if the produce of such land has been diminished by drought, or hail, or other calamity beyond the control of the tenant, to such an extent that the full amount of rent payable by such tenant cannot, in the opinion of the Court, be equitably decreed.

5.—*Rent in kind.*

Commutation of rent in kind.

13. No commutation of rent in kind into rent in money shall take place without the consent of the landowner; and no commutation of rent in money into rent in kind shall take place without the consent of both the land-owner and the tenant.

Division and appraisement of produce taken for rent.

14. Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a similar nature, requiring the presence of the person entitled to the rent and of the cultivator either personally or by their recognized agents, if either party shall neglect to be present at the proper period, or if a dispute shall arise between the parties regarding such division, estimate, or appraisement, either party may present an application to the Court requesting that a suitable person be deputed to make the division, estimate, or appraisement.

Procedure in case of dispute.

15. On receiving such application, the Court shall issue a written notice to the other party requiring him to attend on the date and at the place specified in the notice, and shall depute a suitable person before whom the division, estimate, or appraisement shall be made. The award of such person in respect of the division, estimate, or appraisement shall be final, unless, within three months from the date thereof, either party shall institute a suit in the Civil Court to set it aside.

PART IV.

Of ejectment, abandonment, relinquishment, sub-leases.

Ejectment.

Ejectment of tenants-at-will and tenants having right of occupancy.

16. Subject to the provisions contained in Sections sixteen, seventeen and eighteen, every tenant-at-will shall be liable to be ejected from the land in his occupancy, and every tenant having a right of occupancy, from whom an arrear of rent is due, shall be liable to be ejected from the land in respect of which the arrear is due.

Tenant-at-will not liable to ejectment without notice.

17 No tenant-at-will from whom no arrear of rent is due shall be ejected from the land in his occupancy, unless he shall have received notice of the land-owner's intention to eject him, and such notice shall have been recorded by the Patwari ;

on a written notice put up in some conspicuous place in the village in which the land is situate, at the time fixed in the village administration paper for such notices to be given, or, if no such time be so fixed, on or before the first day of May in any year after the passing of this Act. *In the case, however, of a tenant-at-will of longer occupancy than a single generation, it shall be open to a Court of Law, in the event of such tenant claiming compensation or damages for ejectment, to award a moderate amount, to be paid to him by the Zamindar prior to ejectment; provided the circumstances of his case be such as, in the judgment of the Court, would render his eviction, without such compensation, a measure productive of undue hardship*

Ejectment of tenant having a right of occupancy.

18. No tenant having a right of occupancy shall be ejected—*without compensation*—otherwise than in execution of a decree for ejectment, and such decree shall not be made unless at the date of the decree a decree against such tenant for an arrear of rent in respect of the land from which the land-owner desires to eject him shall have remained unsatisfied for fifteen days or upwards—*after the service of the first process in execution of decree.*

Time of ejectment.

19. No tenant shall, whether in execution of a decree or otherwise, be ejected from the land occupied by him, except at such time as may have been fixed in that behalf in the village administration paper; or, if no such time has been fixed, except between the first day of May and the fifteenth day of June in any year after the passing of this Act; provided that, if, while his rent is in arrear, he has failed to cultivate the land for which the arrear is due, in accordance with the terms on which he holds it, he may be ejected therefrom at any time.

Compensation to ejected tenant for growing crops.

20. Any tenant ejected in accordance with the provisions of this Act shall be entitled to receive from the land-owner the value of any growing crops or other ungathered products of the earth belonging to such tenant and being on the land at the time of such ejectment.

Loss of right of occupancy on ejectment.

21. If a tenant having a right of occupancy be ejected in accordance with the provisions of Section [seventeen]—*eighteen*—from the land in which he possesses such right, he shall lose his right of occupancy in such land.

Abandonment.

Loss of right of occupancy on abandonment.

22. If a tenant having a right of occupancy abandon the land in his occupancy, he shall lose his right of occupancy in such land.

Abandonment, what.

Omission both to cultivate and to pay rent or to make provision for both cultivation and payment of rent for twelve months shall be held to be abandonment within the meaning of this Section.

Relinquishment.

Relinquishment of land by tenant.

23. Every tenant shall continue liable for the rent of the land occupied by him, unless at the time fixed in that behalf in the village administration paper, or, if no such time be fixed, on or before the fifteenth day of May in any year after the passing of this Act, he shall give notice to the land-owner of his intention to relinquish such land, or unless such land shall have been let to any other person by the land-owner.

Sub-leases.

Right to sub-let.

24. Any tenant [having a right of occupancy]—*coming under any of the classes described in the four first clauses of Section* 4—may sub-let or otherwise temporarily provide for the cultivation of his land, whenever for any sufficient reason he is unable to cultivate it himself.

Loss of right of occupancy by non-receipt of produce.

25. Provided that the tenant shall lose his right of occupancy if it appear that, for a period of more than three years, neither the tenant nor his heir has received any portion of the produce of the land.

PART V.

OF CERTAIN DISABILITIES WHICH MAY BE REMOVED BY PAYMENT OF COMPENSATION.

Right of land-owner to resume possession of leased land required for his own cultivation.

26. Any land-owner, proving to the satisfaction of the Court that the quantity of land in his possession is insufficient for the support of himself and his household, may, on payment of the market-value of the land, be entitled to require a surrender of as much of the land of any tenant having a right of occupancy subordinate to him (the land-owner) as shall, when added to the land already in the land-owner's possession, be sufficient in the opinion of the Court for the support of himself and his household : Provided that, at the option of the tenant, the land-owner shall be required to take at the market-value either such additional quantity only, or the whole of the land occupied by the tenant.

Right of tenant to alienate tenure.

27. Any tenant having a right of occupancy in any land, and having an heir entitled to succeed to such land, shall have power, subject to any restrictions imposed on the disposition of immoveable property generally by law or local usage, to alienate his tenure on payment to the land-owner of a sum of ten per cent. of the market-value ;

Land-owner's rihgt of pre-emption.

provided that in every such case the tenure shall be offered for sale in the first instance to the land-owner at the market-value less ten per centum, and shall not be sold to any other person unless the land-owner shall for the space of one month refuse or neglec to complete the purchase.

Right of tenant's alience. Every person to whom a tenure shall be alienated under this Section, shall be deemed to have the same rights and to be subject to the same liabilities as the tenant making the alienation.

Removal of disability to plant or cut trees. 28. Any tenant having a right of occupancy, but disentitled to plant or cut down, remove, and dispose of trees or timber planted by himself or of spontaneous growth on the land in his occupation, shall, on tendering to the land-owner such compensation as the Court shall think reasonable, become entitled to plant and cut down, remove, and dispose of any such trees or timber as aforesaid. Provided that nothing herein contained shall be deemed to authorize the tenant to plant trees so as to diminish the amount of rent which he may from time to time be liable to pay in kind.]

PART V.

Of compensation payable in the event of a tenant with right of occupancy vacating his land under certain conditions.

Section 26.—If the rent of a tenant falling within one of the classes described in the first four classes of Section 4 be raised above the rent fixed at Settlement, he shall be at liberty to apply to the Court for permission to purchase the proprietary title in his land, in lieu of accepting the proposed enahnced rate; and the Court shall be empowered, should there exist no valid reason to the contrary, to award this privilege, in the event of the enhanced demand being insisted on. And should the amount of purchase money not be determined by mutual agreement, the Court shall further proceed to determine the amount, either by a commission or by arbitration, as may be deemed best; but such amount shall in no case exceed 20 years' purchase of the net profit, over and above the Government demand, which would have been derived by the proprietor from the land at the enhanced rates. In the event of the tenant paying down the amount thus determined, he shall be declared proprietor of the land. But if he be unable or unwilling to pay the amount, he shall be declared liable to pay the enhanced rate of rent.

Section 27.—Any such tenant having an heir entitled to succeed to his land shall have power, subject to any restrictions imposed on the disposition of immoveable property generally by law or local usage, to alienate his tenure on payment to the land-owner of a sum of ten per cent. of the market-value; provided that in every such case the tenure shall be offered for sale in the first instance to the land-owner at the market value less ten per centum, and shall not be sold to any other person unless the land-owner shall for the space of one month refuse or neglect to complete the purchase.

Every person to whom a tenure shall be alienated under this Section shall be deemed to have the same rights and to be subject to the same liabilities as the tenant making the alienation.

Section 28.—If a proprietor desire to take possession of lands occupied by a tenant of the class described in clause 5 of Section 4, the latter shall be entitled, if he have committed no default, to receive compensation by way of damages, to be paid prior to eviction. And if the amount cannot be determined by mutual agreement, the Court to which application may be made shall proceed to determine the amount, either by commission or by arbitration, as it may deem best. Such amount, however, shall in no case exceed 20 years' purchase of the

average annual profits realized by such tenant, over and above the sum payable to proprietor; and on the latter paying down such amount, he shall be put in possession of the land. On the other hand, if the rent of such tenant be raised at any time above what he has heretofore paid, he shall be at liberty to demand compensation, determined as above; but in no case exceeding 15 *years' purchase of the average profits which would be still left to him at the enhanced rates; and on this amount being paid by the proprietor, the tenant shall vacate the land. Should the proprietor, however, be unwilling or unable to purchase, he must forego the proposed enhancement of rent.*

PART VI.

OF COMPENSATION FOR TENANTS' IMPROVEMENTS.

Right as to improvements.

29. The land-owner may make improvements on the land in the occupation of any tenant and any tenant—*who does not come under any of the classes described in the first four clauses of Section* 4—may with the previous permission of the land-owner make improvements on such land: Provided that the land-owner shall be deemed to have given such permission in every case where being cognizant of the improvements while they were being made, he did not expressly prohibit them. *In the event of a tenant of any of the special classes above referred to refusing to make or to allow to be made any improvements desired by the proprietor, a Court of law, to which application may be made by the proprietor, shall be empowered, if it see sufficient cause, to compel such tenant either to make the improvements himself, or to allow the proprietor to make them.*

Section 30—*Every tenant of the above classes shall have authority to make such improvements as he may deem desirable; irrespective of the wishes of the proprietor; and any other class of—*

Enforcement of tenant's right to require or make improvements.

[30. Any] tenant having a right of occupancy may require the land-owner either to make the improvements or to give the tenant permission to make them. If the land-owner refuse to make or neglect to commence and within a reasonable time to complete the improvements required of him, or to give the tenant permission to make them, the tenant may, on satisfying the Court that such improvements or any of them are or is desirable, obtain an order authorizing him to effect them or it himself.

Tenant's rights to compensation for improvements.

31. If any tenant shall have made improvements on the land in his occupation in accordance with the conditions mentioned in Sections twenty-nine and thirty, and if the land-owner ejects or brings a suit to eject or to enhance the rent of such tenant, the tenant—*if he have to vacate the land*—shall be entitled—*in addition to any compensation by way of damages that may be awarded to him under the preceding Sections of this Act*—to compensation for the outlay, in money or labor or both, in making such improvements, which shall have been effected by him within twenty years next before such ejectment or the institution of such suit as aforesaid.

32. Such compensation shall, in case the tenant be ejected or the landowner sue to eject him, be made by paying in money; and in case the landowner sue to enhance the rent within twenty years after the date of effecting any such improvement, the Court in making a decree in his favor shall [not] take into consideration—*so much only as the proprietor may be shown to be fairly entitled to share out of*—the increase of the value of the land which may reasonably be attributed to such improvement; Provided that in estimating the amount of the compensation, regard shall be had to any benefit derived by the tenant from his having been allowed to hold at a rate of rent more favorable than the rate at which he otherwise would have held.

Compensation how made.

33. The word "improvements," as used in Sections twenty-nine, thirty, thirty-one, and thirty-two, means works by which the annual letting value of the land has been, and, at the time of demanding compensation, continues to be, increased, and shall comprise—

"Improvements" defined.

1*st.*—The construction of wells and of works for the storage of water, for applying water for irrigation, for drainage, and for protection against floods; the reclaiming and clearing of waste lands and jungles; and other works of a like nature;

2*nd.*—The renewal or re-construction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value.

PART VII.

Procedure.

34. For the purposes of this Act, the Revenue Courts shall be the several Courts mentioned in Section 4 of the Punjab Courts' Act, 1865, holding sittings on the Revenue side, other than Courts of Small Causes; but instead of the Chief Court of the Punjab, the final Court of Appeal shall be the Court of the Financial Commissioner of the Punjab. The Court of the Settlement Officer shall also for the purposes of this Act be deemed to be a Revenue Court. All the provisions of the said Act and of Act No. XXVII of 1867 (*to empower Deputy Commissioners in the Central Provinces, the Punjab, Oudh, and the Jhansi Division to distribnte the business in subordinate Courts*) shall, so far as they are applicable, apply to the Revenue Courts.

Revenue Courts, what.

35. Claims under Sections eight, nine, thirteen, fourteen, —*and*— fifteen [twenty-six, twenty-seven, and twenty-eight] shall, unless otherwise provided for, be heard in the Revenue Conrts. The rules relating to civil procedure, for the time being in force in the Punjab shall, so far as they are applicable, apply to all suits brought before the Revenue Courts under this Act.

Revenue Courts to hear claims under certain Sections.

MEMO. ON THE PUNJAB TENANCY BILL AND ARGUMENTS OF SETTLEMENT COMMISSIONER DISSENTING FROM ITS CHIEF PROVISIONS.

Object of this paper.

Since the Punjab Tenancy bill was introduced into Council, I have had occasion to address several of the Members of Council on the subject; and I conceive that it may be useful, if I condense in one paper the contents of my letters to them.

Self defence.

As I have been spoken of "as carrying out ideas of my own" more in favour of landowners than tenants, I will not apologize for prefacing this memorandum with a few words on this point. I shall only adduce a few out of the many considerations which, I am confident, would clear me of any such bias, were the matter fully inquired into. But I trust the few that I do adduce will enable those, who read the subsequent parts of this paper, to assure themselves that my statements are impartial.

I.—I am not an Executive Officer but a supervising and controlling one. The facts concerning the relative position of Landowner and Tenant, in the Amritsur Division, contained in my printed papers, were collected not by me, but by 17 subordinate Judicial Officers, under 3 English Executive Officers. Those who say I am biased, say also that my English and native executives are biased; and yet these officers are specially selected by the Punjab Government, and so it may be fairly presumed, as a rule, are specially qualified for Settlement work.

II.—When I first took up the work, I had no idea of what was coming upon me; indeed I shared the old views with the rest that occupancy rights did prevail. When however enquiry in every quarter of my jurisdiction revealed facts contrary to those views, when in daily conversation with the people of both classes the proofs came in thick that, *as a rule*, there was no such thing known in the country, in days anterior to British rule, I turned round and stated frankly, that I had been convinced the other way. (For this see paras. 15 and 16 of Appendix A; para. 10 Appendix G; para. 3 Appendix D. Part II; and para. 99 Part III. of the printed papers).

Do these shew that I had come to this question with a bias, or had *gradually* changed my opinion, upon the strength of the thousands of facts and instances of wrong, that had come under my notice from time to time, in a period extending over nearly 2 years. For this is *the* point.

III.—Then look at the results. Consider whether the enquiries have been conducted with due regard to all interests. All I say, and have ever said, is this, "where there *are* occupancy rights, uphold them; where they are "proved by overwhelming evidence to be a fiction, let us be just, let us remedy "the great injustice."

Now weigh these words with the results of our enquiries. Out of 60,000 holdings (see Part III page 3.)

15,000 (25 per cent.) are upheld with their tenant right status.

1,253 (over 1 per cent.) have been bettered, being made proprietors;

8,771 (13 per cent.) have admitted themselvs to be *tenants-at-will*;

8,165 (13 per cent.) have entered into terminable leases and special agreements with the proprietors' consent;

27,000. (or 47 per cent.) contested the propriety of their recorded status being altered, and yet even these admitted that they had no claim to the rights, which in the confusion and non-enquiry of former days had been conferred on them.

I call upon those who impute bias to our proceedings, to say how, when this is the plain state of evidence, it was possible for me to advocate any other conclusions than I have; and granted that in my advocacy I have shewn some warmth, which however I am not prepared to admit; still was there not occasion for it. I feel called on also to make one more remark: and that is, that I am convinced, that had this evidence been before our first Settlement Officers, when they framed their records, they would never have made these occupancy right entries at all. They would have followed, as I have done, the custom of the country, which is proved to have existed from the statements of the people themselves.

Application for legislation.

It has been said that I applied for legislation on this subject; but that now when the legislation is initiated, I say I do not want it. But this is not a correct report of what I have urged, and repeatedly urged, on the matter, see last Extracts, Appendix I of Part II, of the printed paper; that will shew that when I found how very materially the facts newly brought to light contradicted the old Settlement Records I asked Government for orders, and expressed a hope, that some rules would be promulgated "in accordance with principles that had been reduced to record and issued for guidance, during this Settlement." "If this is not done" I said. I leave it to you (Financial Commissioner) to consider how very unfairly the omission will operate on all our proceedings." But what it is now proposed to do is very different from this. I asked for that which would affirm the principles of our work, but the proposed bill will sweep away all that has been done, and set us to work all over again on rules of a *hard and fast character*, very different from the principles which were suggested by the facts my executive subordinates have collected. Indeed having carefully studied those facts for the past 3 years, I consider I am entitled to be heard when I say that the bill practically is no concession at all.

I am not averse to legislation; but I do aver that the proposed bill is not at all what is wanted in respect of occupancy right tests. What I asked for was, that Government should share with me the responsibility of the enquiries I was making, and I maintain that I had reason to expect that, in so grave a matter Government should either have stopped my proceedings ab inito; or if they allowed me to proceed with them, then that they should heartily support me, (see also Part III para. 65 of printed paper). In one respect, however, I admit that I have asked for legislation. I was recently told the existing state of the

law did not bear out our proceedings by way of legislation; I replied that I believed it did; but that if my belief was wrong, the system should be legislatively sanctioned, and that I much preferred a measure of that nature to any other kind of legislation on this subject.

Tenant Act needed.

However it is more profitable to consider whether we really need a Tenancy Act. On this point, I am free to say that I think it desirable to have a Tenant Right Act as well as a Tenant Rent Act, and also I think that the framing of such a measure is quite feasible. There is an underlying principle existing every where, which is looked upon by the people as regulating the ordinary relations between a man who *owns* land and the person to whom he *entrusts it for purposes of cultivation*. It is possible to deduce from an examination of a large number of actual cases these principles, and so lay them down as *generally accepted*, though not absolute criteria. These could serve as guides to decision in most Districts, and where instances came up of an exceptional character, or depending on local peculiarities, provision could be made to allow such tenures to be exceptionally dealt with, the basis of all being custom as known to the people to exist, as followed by them universally.

I am satisfied that, if Government do not now see fit, on the representation of its officers, to grant an Act, of which the foundation shall be the old rights and usages of the people, it will not be long before the subject will again be forced on their consideration, and that not by Government Officers, but by the much stronger voice of the people themselves. We agree on all hands, that there have been great and grave errors; and I have been labouring for the last 4 years to mend them; so any measure that does not destroy all I have done, and gives me fair hope of working rightfully and successfully, will be welcomed by me.

Enquiries of last Settlement.

* Supplement to Gazette of India, January 25th, 1868, page 44.

The Honorable mover of the bill has asserted* that the entries of the old Settlement records were based on *customs then enquired into*. This was not the case. There was no such enquiry in Goordaspoor, Umritsur, Sealkote, Lahore, Kangra, or Goojranwalla. The Honorable Member has inadvertently made a statement which is contrary to the fact; witness not my word, (though I am myself one of the old Settlement Officers, and speak of what I saw and did myself) but the records themselves piled up in our District offices. All that the Settlement Officers of these Districts looked to, was a term of years and nothing else. I repeat at the time of attestation, the question of custom was *not* gone into, though many other things were looked into. There was no confronting, no questioning the tenant, as to his actual relations, or terms of occupancy. I satisfied Colonel Lake, Financial Commissioner on this point, I have now satisfied Mr. Roberts, his successor. I could have convinced the Honorable mover of the Bill too, had he gone into the offices with me. In the *chitta Khuteonees* (rough field abstracts of the record of rights) all we find are entries *as to terms of years* carried on from the field registers (Khusrehs). This is a positive fact in all five districts. If any one doubts it, the papers are to the fore; let them be looked at. In Goojrat only was there any enquiry, and so that disrtict we have left alone.

Here is another fact. When I was assistant in the Baree Doab Settlement, I enquired on what principles the Hereditary occupancy status was to be declared. I can produce a proceeding containing the instructions I received, in which I was referred to the Board of Administration's remarks, and then directed, not to go upon custom, (Kooch husr oopar rewaz ke ne) anglice custom is to be no element of consideration; yet the Honorable mover of the bill says custom *was* enquired into.

Finally look at the reports,* of all the old Settlement Officers: the great majority roundly acknowledge (even in those days,) that occupancy rights were "conceded," "conferred," "created," by us and so on. Custom, in truth, was not followed. Is it possible that it will be maintained in the Council of India that our Executive officers had any right to interfere with private property it this way, or to ignore all the relations existing between these classes, however imperfectly they may have then been known to them. I think not.

* Appendix VII Part I.

First Settlement Records.

I am informed that a strong party in council are averse to any interference at all with the old Settlement records. But I cannot believe that in a case of this sort, where it is manifest that very alarming injustice has been done, and that but recently, the Council would refuse to interfere. Its object (witness the late debates) is to correct, and not to perpetuate errors. To those who would argue that these entries of occupancy rights having been made at the first Settlement, and eleven years (not 17 as has been asserted in Council) having elapsed since then, we are now justified in giving a complete title pursuant to those entries, I reply that for the last 11 years, of the whole 18 years we have held the Province, this question has actually been under consideration, correspondence, enquiry, and discussion; witness the files of letters and references in Financial Commissioner's Office.

If I am asked to satisfy the Council that my proceedings in this matter have not followed the haste, nor fallen into the errors, which I have above pointed out, characterized those of the first Settlement in this respect, I reply that there has been the most careful confronting of parties, in every single case out of the 60,000 above mentioned; all arguments and objections and final orders have been recorded by responsible Judicial Officers in their own hand writing in each individual case, in the presence of the whole village; and this has not been done by one officer, but by some 17 different officers, in the 3 Districts. What better security can I give?

And surely it is very venturesome to maintain that records which were framed when we had held the Punjab for barely 6 years, and comparatively speaking knew scarcely anything of it, shall never be altered. It is not too much to say that it was impossible but that records so framed, when we knew so little of the country, must *inevitably* have contained grave errors. Yet there are those who say "shut your eyes and rigorously enforce what is in them," be the consequences what they may.

Districts north of Chenab.

I have been accused of straining conclusions because I expressed an opinion, that the entries made in the records of the Districts north of the Chenab that have been settled, should not be interfered with. But this opinion involves no straining of conclusions. It

is a fact that for these Districts, Shahpoor, Goojrat, Jhelum and Rawulpindee, that astute Commissioner Mr. E. Thornton, got the rule laid down in Chief Commissioner's letter of 1855 that "it was the *nature quite as "much as the length of occupancy*, which entitles a cultivator to privileges; "that 12 years have not been authoritatively fixed; and that a term of "occupancy was not to be taken as test of right of occupancy." So all the Settlement Officers in these Districts really made a formal enquiry (just as we are now doing south of the Chenab); in which in every case in which the owner stated he could not oust the tenant, the right of occupancy was accepted as existing in favour of the tenant. This being the case, and Settlement awards having thus been given, the entries now stand as the result of "*res judicata.*" If the Honorable mover of the bill wishes, I can shew him numerous orders of his own as Commissioner of Rawulpindee affirming this view, that statements deliberately made to a Settlement Officer after enquiry cannot be repudiated.

I repeat, therefore, I would not interfere north of the Chenab;—

(1.) Because of these former enquiries.

(2.) Because of the former written admissions of right of occupancy;—

(3.) Because of the numerous orders disallowing the re-opening of entries made pursuant to 1 and 2.

My argument, then, is simply this, where there were *no* enquiries, interfere now and make enquiries; where there have been, leave the results alone. It surely cannot be maintained that there is the slightest indication of any bias here, or that I have failed to do what was just and fair to both classes in each District, according to the circumstances of each District.

Evidence of Proprietary rights anterior to British rule considered.

Sir William Muir's speech in council, on the Punjab Tenancy bill on the 25th January 1868, called forth from me the following remarks in a letter addressed to him on the subject. I transcribe the remarks in extenso, just as they were written currente calamo.

"I have extracted parts of your speech, and add my remarks opposite them. I want "you and others to weigh them in the balance; for whether to give an opinion. and not to "support it by facts is better than to give your fact firsts and the conclusions drawn from them "afterwards, I leave you to decide as you like from the following;—

"Before our occupation of the Punjab the "respective positions of proprietor and tenant "were vague and unsettled. The former seem- "ed to have possessed no such thing as an ab- "solute right of property in our sense of the "term."

You may take any 50 men out of a crowd and ask them regarding the 16 positions I have recorded in page 9 Part III. See if the verdict does not agree with what I assert in a general if not a detailed way. No property indeed! when facts by thousands could be given in every second village, utterly and indisputably to refute this. It has been the bane of our Revenue system, that such general axioms are held, and handed from one officer to another, till they get a kind of credence; the fiat goes forth in an order being issued asserting this principle, when in the villages the popular belief, and the incidents themselves, bear evidence entirely the contrary way.

"Because the former was liable to Constant "interference."

Proof; admitted universally in every 3 out of the 4 holdings now examined in all 7 Districts except Kangra, where holdings were acquired chiefly by grant, there being few coparcenary estates.

* *Proof* **A**. Take the admissions in only No. 4, 5, 7, in page 3, Part III. printed papers give 15,000 tenants who say so; while (No. 19) nearly 2,000 more have thrown up their holdings, thus 17,000 in all, hard and strong proofs.

* *Proof* **B**. Evidence as summarised in para. 15, Appendix A part II.

* *Proof* **C**. Replies of 45 against 26 officers in new evidence.

† *Proof.* In Appendix X. of part I. statement shews out of 10,000 holdings, in only 32 did the holders assert the acquisition was from Kardars.

‡ Page 47 of supplement to Gazette of India, dated 25th January 1868.

"And so also with the Ryot, he was scarcely interfered with."

|| *Proof.* New evidence given in printed replies of Deputy Commissioner put before Lahore Committee abundantly shews this.

† Reasonably so, as regards

Shareholders,	8,490	Who numbered, it will be seen,
Village servants,	14,498	
Non-residents,	10,555	
Total,	33,483	

more than ½ the 60,000 holdings of Umritsur Division; page 4, part III.

* Mr. Brandreth even now admits this as regards shareholders and non-residents. The Viceroy in his Minute from Simlah distinctly admitted this as regards these 3 classes which affect ½ the number.

Was this the fact? Look into the history of the villages, the origin of the sub-tenure. What are these as a general rule?

(1.) Land was given to cultivator for *purposes of cultivation.*

(2.) By the *superior classes.*

(3.) Generally as individual holdings and *subordinate to individual proprietors.*

(4.) Entire evidence shews that proprietors could evict* and did evict.

(5.) Facts by the thousand can be given to shew that present tenants received *cultivated* lands.

(6.) That former tenants were evicted and the fields given to present incumbents.

(7.) Not by Kardars† as a rule, but by individual proprietors.

(8.) If this was not so as a rule, if the proprietors were liable to interference how do you account for the existence according to Mr. Brandreth ‡ of so many as 6 Lacs of tenants-at-will holdings, when only 3 Lacs are estimated by him as under privileged tenants. Is it possible you can say, broadly and generally, that interference was such as to prevent or deny the existence of ordinary relations between *property* and *labour.*

Ryot is the old Bengalee term, one never hears it here. A malik talks of his tenant, he calls him his "*assamee,*" "*pahee,*" "*adhjogeea*" "*bhyal*" (partner in cultivation) and such like distinct terms: and these terms are everywhere used in daily life. Have *they* no meaning? And can you justify what you say that he was rarely interfered with; when

(1.) The whole evidence shows if the owner wanted || the land, he could turn out his tenant. (The Lahore Committee adopted the rule in Section 26.)

(2.) All our facts shew that proprietors *could* and *did* evict.†

(3.) The bulk of the new evidence, further confirms the power of eviction, as many as 45 Officers against 26, asserting this more or less to be the result of their enquiry.

(4.) Where the *facts,* too, shew that more than ½ the tenants are found to be proprietors holding one of another, village servants, and non-residents, all of whom as a rule, (the whole evidence proves) could* acquire no such right adverse to interference by proprietors, how is it that as far as we, in the Punjab, are concerned, you still declare "they were rarely interfered with."

"There were large classes of cultivators be-"tween whom and the proprietors it was dif-"ficult to draw any broad practical distinction. "The position and rights of the one seemed to "merge into those of the others,"

Some there were, but there are the exceptional instances; the enquiry in every District has shewn this. The truth is, that many of this class claimed ownership, and got decrees, for the higher status at last Settlement.

The error in this remark is the employment of the word *large*.

"for the cultivators paid no rent in our sense "of the word, but only the share of the revenue "demand upon his holding."

This is no reason necessary to establish a *right*.

(1.) There are thousands of tenants-at-will who do the same, aye and pay in cash at jumma rates and nothing more.

(2.) There may be many reasons for this, e. g., jumma being too high.

(3.) Village expenses are often paid and generally so, when no rent is paid; whereas the contrary is always practised, if rent is paid: village expenses were borne by the proprietors in Sikh rule under the grain system. The payment of nothing beyond jumma rates has arisen, and often does arise, out of a mutual agreement. Naturally it would be so under high taxation. Very often the non-payment is mere matter of favour; even you* yourself admit this.

* See 2nd line page of proceedings of Council January 25 1868.

(4.) Because *no rent* was paid under a cash system, it does not follow it was not paid under grain. I can shew whole tracts† of villages, where a regular proprietary rent was taken on the maund; and when not taken the parties at once give you reasons for this by referring to soil, position of land, circumstances of tenants, and the fact of tenants being in demand. Wherefore it is fatal to generalize on this ground I could prove this to you in an hour's ride over the country.

† In Bujwant.
Pergunnah Zuffurwal.
Do. Shukurgurh.
Do. Andur.
Do. Puthankote.
Do. Pusroor.
Do. Reya.
Do. Goojrat.

"his privileges and profits being in this respect "very much the same as those of the proprie-"tor."

What is the fact here.

(1.) Tenants were never as a rule allowed to sink wells.

(2.) They had always to help in building homesteads, to pay fees, give presents of green wheat, vegetables, labour of their cattle in the early sowings, render suit and service, turn out when the land was wanted for personal cultivation; all which incidents our money system has come in and uncouthly disturbed,‡ which is a source of general complaint.

‡ *Proof.* This in admitted on all sides by the tenants themselves before the Settlement Officers.

(3.) He never could sell trees, mortgage or sell his tenant right whatever it was, (which has been aimed at in this bill), nor sublet without the consent of the proprietor. Is there not a difference here. What then were his *privileges*.

‡ *Proof.* Look into the village administration papers of last Settlement. This is entered in nearly every village.

(4.) Under grain system (chiefly in vogue before) he paid revenue at grain rates, plus something in excess, (no matter how small, it was, the proof and profit of property when we took the country) as *rent*, known under the name of 'Ismee' 'malikana,' 'Biswee,' 'seerman,' 'Punch-seer-man,' 'Bara-topa manee,' hala, (a cash rate on zubtee) and such like varying from 5 to 15 per cent on the net produce, which went to the proprietor. It is incorrect then to say that up here, the *position* was the same in respects to profits. There are thousands of old village records which will prove this point.

"Now I ask, as these were the only positions established by you in Council, to shew that "rights and interests were vague and undefined, where do you find grounds for your general "opinion for all this? The facts as locally known, will not support your statement. I wish I had "only time and leisure, and I could place these facts before you in any number you please, you "fixing before hand the points upon which I was to supply the information, direct from the "villages selected at random by yourself."

After the above statement of evidence on the facts, it can scarcely be maintained that the opinion of this Honorable member as given in Council, and the arguments so studiedly given in the minute of Government of India, dated April, 1867, against the propriety of rectification, because in former days it is sought to be made out there was *no property* in land, and no *customs* that were commonly in force, are really entitled to acceptance.

Custom.

The Honorable mover of the bill has stated that it declares that "no "occupancy rights shall be acquired by lapse of time, but "that they shall be determined by the custom of the country." I find the wording of the Act is hedged up in such a way as to limit even this position to almost nothing.

Part II.—Section 5, Rule 3 of the Act requires to be looked searchingly into. It fixes 30 years, so that there *is* a term in limine ; and what is this fixed for, but for these very cases that *custom* is to decide. It seems clear, however, to me that if custom, or analogous instances of eviction exercised can be proved there is no necessity for weakening this by fixing a limit of 30 years, or any term of years. It is a mere question of fact. Is a relation, obligation, or understanding proved ? Is it proved that in such incidents of tenure there has been eviction elsewhere near and around. If so, what has a term of years to do with it ? Every thing depends on these incidents, and relations, and the fact of eviction under them, being proved. The words "within the 30 years immediately" should be omitted, and then the Honorablo Mr. Brandreth will be right in what he says, not otherwise.

If a term is needed, let it be for the cases *not* proved, and by such a proviso as this.

"*Provided*, that if no such analogy be proved, and it be established that *adverse* possession has been held absolutely for 30 years preceding the suit (or say even 12 years if desired ; to this no one would object.)"

This would allow full scope for decision *according* to *custom* of the country, which the Honorable mover of the bill at last lays stress on as its main object. But I must observe here, that as section 3 at present stands, it seems

to me that every possible difficulty is placed in the way of "custom" becoming the basis of the Court's decision. Instead of the word custom being used in this section a diffuse definition is substituted which may mean any thing. What two Courts will agree as to what constitutes *similar circumstances*? and so carefully is the use of the word custom avoided or any approach to it, that (I may here state) when at the last Lahore Committee I proposed its insertion, the Honorable mover, who sat as President of that Committee, strenously opposed me, carrying his point; nevertheless that Committee yielded so far as to substitute.

For these words	the following
"of the same class and holding under similar "circumstances"	"of the same class and under similar incidents "of tenure"

yet even this alteration Mr. Brandreth omitted from the bill before Council.

If we are not to follow *custom* closely in our enquiries concerning the properties in land, I can only say we are all condemned; for our work for the last 16 years, the Settlement Regulations, the orders of the Local Government, the Queen's proclamation, the Punjab Civil Code, are all based on the recognition of this important principle, and I know no other clear and safe principle which can be substituted for it in our Settlements, that will be just and fair to both parties and keep English Officers from inculcating their own views when carrying out a Settlement.

I say distinctly, *a recognized custom does exist,* that it can be easily ascertained by enquiry, and that it is freely admitted by the immense majority of the people as commonly accepted, and acted upon by them, in their relations one with another. Let us then bring to record these commonly accepted principles and customs and then how easy to allow exceptions to them to be proved *adversely* wherever such exist, according to the circumstances and local peculiarities of each District. I have been at this sort of work for 14 years and I can see these customs. The people too can see them, our Native Officers can see them; English Officers looking through English spectacles may be loth to admit them or say it is difficult to find them, because there may be a desire to evade the consequent necessity to adhere to them. We have been told that we disagree in the Punjab as to what was the custom, but as far as I can learn, and am permitted to speak, we all agree on these points.

(1.)—That occupancy rights were rare and uncommon.

(2.)—That where mistakes have occurred, we can legally rectify them under Regulation VII. of 1822, Section 14.

(3.)—That under this law, we can only do so by declaring the existing usage and following it.

(4.)—That we can discover a distinct custom and have done so all along and our awards have been given agreeing therewith.

As to the *explanation,* clause to section 3, I can see no wisdom in inserting this. It will merely put a catch into the months of the tenants, and so increase the bitterness of litigation. The Courts are quite competent them-

selves to dispose of any such point, when raised in objection in each suit as it occurs. I annex a sketch of the amendments which I should wish to see introduced into part II of the bill. If they are passed I shall be, to a better extent, satisfied. But I cannot bring myself to believe that part II, as it stands, will be accepted by the Council. It will do nothing but cause confusion and lead to further harm.

AMENDMENTS PROPOSED.

PART II.

Section 4 to stand as before:—

" 5 to stand as before, omitting the words "for a term commencing not less than twelve years prior to the first day of April 1849."

The land owner may rebut the said presumption by shewing.

Underlined parts shew the altered text.

(1.) That the entry in the said records was made in violation of distinct rules, *apart from the mere test of a term of years* laid down by the Settlement Officer, as set forth in the official report or the record of the Settlement; or.

(2.) That the tenant, &c., &c., (same as it stands).

*(Or still better) that by the custom as known to exist in the same or adjacent villages other tenants (excepting tenants specified in Section 3) have, &c.

(3.) That it can be proved by a suit in court by a proprietor objecting to the right of occupancy * that other tenants of the same class and holding *on similar incidents of tenure* in the same or adjacent villages (excepting tenants specified in Section 3) have been ejected from their holdings at the will of the landowner; *provided* that if no such custom or analogy is proved and adverse possession has been held absolutely for 30 years previous to the suit, the right of occupancy will be upheld.

(4.) That on any other grounds, &c., &c., (same as it stands)

N. B.—These word are taken from Regulation VII.

Provided, that if a general revision of Settlement shall have taken place or is in progress, it will be competent, on the part of any Settlement Officer or officer specially empowered by Local Government "in cases in which dispute may exist in regard to the nature of the tenure of any "person occupying the soil to declare in an official proceeding the nature and extent of "interests possessed by such occupants (in accordance with the "principles enunciated in Section 5) leaving the party who "may deem himself aggrieved to seek redress by summary appeal or by regular suit in court; as has heretofore been allowed by Section 14 Regulation VII of 1822, and is now provided for, under rules 3 and 4 Section 5.

Leave out explanation clause altogether, keeping on.

Section 6 (as it stands.)

Section 7 (as it stands.)

Settlement Officer may correct previous Settlement entries.

Our power to make Settlement awards in alteration of more previous Settlement entries, has been disputed. But I am supported both by Colonel Lake and Mr. Roberts, (Financial Commissioners) on this point, and Section 14 of Regulation VII, of 1822 clearly contemplates this.

His Excellency the Viceroy, in his Minute written when I was at Simlah, said that when actual complaint is made to a Settlement Officer, he is authorized to interfere and modify the records on certain principles to be fixed. He then laid down those principles concerning each class of cases and wrote

that the principles would have, for their object the adjustment of all claims and disputes if possible, by compromise, and failing this by the ordinary courts. This was allowed for such classes as

(1.) Shareholders in village ownership cultivating one of another.

(2.) Village servants.

(3.) Persons holding mortgages.

(4.) Non-resident cultivators.

(5.) Trustees and Managers.

Out of the 60,000 holdings representing 2,82,788, acres in Umritsur Division, these classes in that Minute were shewn to hold.

	Numbers.	Acres.
(1.) Shareholders, ...	8,430	35,381
(2.) Village servants, ...	14,498	68,727
(3) Persons holding mortgages, ...	955	7,714
(4) Non-residents, ...	10,555	49,335
(5.) Trustees and Managers, ...	128	620
Total,	34,566	1,91,777

In other words, in more than ½ the holdings, the principle was affirmed, that the Settlement Officer might modify and correct the old Settlement entry.

I quote the words to be more safe.

(1.) "*Shareholders*—if so and so, then Settlement Officer will satisfy *himself on these points and modify the records*."

(2.) "*Village Servants*—whenever it is proved to the satisfaction of Settlement Officer "that these lands are really held on the condition of some service continuously rendered up to time of enquiry; *then Settlement Officer has power to modify the Settlement entry*."

(3.) "*Persons holding mortgages*,—can, in Governor General's opinion, be entitled to "hold merely on the terms of the mortgage which "should be *looked into by Settlement Officer and "the entry be corrected accordingly*."

(4.) "*Non-residents*,—ordinarily these have no right; the Governor General has no objection to the *Settlement entry here being corrected regarding these*, "subject to the principle above laid down, viz., (1) by compromise "(2) and failing this by regular suit.

(5.) "*Trustees and Managers*,—here *Settlement Officer* can *modify the entries on same "principles*."

I quote these passage to prove that, as regards ½ the holdings enquired into, another solution was found and agreed to by His Excellency the Viceroy, viz.

(*a.*) That Settlement Officer had power to modify and correct the entries.

(*b.*) That it should first be done by compromise.

(*c.*) And failing this by reference to ordinary courts.

What is this but affirming the principle of Regulation VII of 1822, which we have been following ever since, on the faith of this accepted solution confirmed by the visit to Simlah. The Honorable Mr. Brandreth now wants, by his bill, to accept nothing we have done, except.

(I.) That which parties have agreed to before Settlement Officer.

(II.) Where bonafide decisions have been passed by an order of court, and this too only on the *new* principle of presumption and rebutter, which it is evident he wishes to have retrospective effect.

Thus, then, his object is neither more nor less than to send every *case into court*, and upset all we have done. Is this fair or reasonable, after what has been done, and has been accepted all over the country.

Registration corrected by legislation versus Legislation alone.

I still maintain, as I have hitherto uniformly done, that a complete system of registraion under some general rules laid down, if it be so desired in this Act, in order to give our operations more legal vaildity, would afford fairplay to every body, would at once allay excitement, restore harmony, avoid litigation and expense and would be infinitely wiser, than referring every disputed entry in the Settlement Records to a suit in Court. I would engage to carry out a system of Registration in such a way as should leave no room for complaint. This is exactly what Regulation VII of 1822, contemplates. I have 4 points to urge in support of such a system.

(I.) It is legal already under Regulation VII of 1822, after the Registration awards are given there are still two doors open.

(*a.*) Appeal on the summary enquiry to superior Settlement authority or to Financial Commissioner.

(*b.*) Suit in court to set aside the Settlement award.

(III.) It gives the best security that usages as known in the country are followed.

(IV.) Under it, the entries of former Settlement Records are always respected, unless proved or admitted to be wrong.

Do not then deprive Settlement Officers of the power of attesting Records which are manifestly wrong; no officers will ever do Settlement work properly if they are so restricted.

Again, it will not do to forbid Settlement Registration in respect of tenant cases only. To be consistent, the Settlement Regulation must be cleared of all registration provisions in respect of other rights as well. But if that is done, whether totally or partially, it will simply be impossible to form a record which *accords with facts as they exist*; and if this is not secured, the whole aim and object of the Settlement Registration will become frustrated.

To be more particular, I specify here in greater detail the advantages of Settlement Registration over the system proposed by the bill.

I was asked by Mr. Brandreth what security there could be without legislation, where the Settlement awards are contested, that decisions would be given by the Regular Courts in accordance with the principles I advocate; what would become of all my work without legislation? my reply was that we had these securities;

(1.) That few cases would be contested as every case would be dealt with *before there was any dispute* and the terms of the tenancy would be defined as mutually accepted.

(2.) That if contested, there was our enquiry shewing why the right was disallowed by custom.

(3.) That there would be hundreds of analogous cases and precedents in the village and around, where parties holding in a precisely similar way, have admitted the tenure to be subordinate, and one that allows of eviction.

(4.) That the new *records* contain abundant evidence of the usages that prevail in the village.

(5.) That at the *new* Settlement, hundreds of cases have been judicially decided and upheld in appeal on correct principles, following custom, which could be referred to.

All that would be needed in the bill, to protect the objector contesting hereafter, and for the court to know when it could take action, would be to insert some sections providing in what cases the courts were to affirm our titles, or allow them to be reopened, the onus of proof lying of course with the complaining party. This is all just and fair to *both* parties. Whereas the plan in the bill is decidedly unsound for these reasons.

(*a.*) It gives a bare presumptive title only to the tenant on entries in records admitted by most of the Council to have been prepared erroneously; i. e., it bases a weak title on a foundation of error.

(*b.*) It prevents the courts from ascertaining what is the true status, and custom, by attempting principles that will operate harshly, and so bring about a spurious tenure instead of restoring the real tenure known to exist as ascertained and recorded by us in the Settlement.

(*c.*) It tends to drive every body into horrible litigation and to maintain this conflict for years.

In conclusion, I can only say that the plan of Registration is not mine. I find it is sanctioned even by Thomason's Directions. I follow in the footsteps of such authorities as Mr. E. Thornton, Sir D. McLeod, Mr. Edmonstone, and, if I mistake not, Sir John Lawrence, who has often expressed his approval of such action.

Objection has been taken to the Punjab system or protective leases given in the awards.

I admit this is our weak point, I can only say I have no objection to discontinue it. We can avoid this part of our procedure. The plan of protective leases has arisen out of a wish expressed by both parties for indulgence before eviction. The reason urged is this; for 10 years, right or wrong, these tenants had held under protection given by Government and the first 4 or 5 years were bad years, when a money Settlement was oppressive; now that the day of profit has come round the proprietors say " well, we can afford to give a lease to compensate for the erroneous protection given by Government" surely there is wisdom and leniency in this.

Another reason was, this, I felt all I was doing was under consideration and no orders passed. It was fair to try and effect a kind of compromise in favour of the tenant in such a way as that the old mistakes should not operate hardly on the proprietors. Every body felt this to be a fair arrangement whereby *decisions according to custom could be declared and yet without having immediate effect on the tenants, who had time allowed* to them for further complaint, or for proving their right if they really had any. The native mind had appreciated this. English minds ever suspicious, and more so in a question like this (particularly those who take up the tenant side) lay hold of it. I believe the objection exists really in the minds of English Officers alone; or why this singular absence of complaint all over the country. Every one knows what has been done, for he receives copy of the Register defining terms of tenancy as now declared. Every one sees there has been a regular *sifting* and application of the minds of our native and English Officers to the adjustment of these old mistakes. They have seen that complaints *are* heard, the proceedings can be reviewed; that suits can be, and are, instituted, heard, and appealed; yet the general result is accepted all over the country.

Now I ask what mesmeric power have I to influence so many people to remain silent? To my mind, the real explanation of this can be traced to the fact of a formal enquiry being made under Regulation VII of 1822, before the whole village; in open court; village by village: where statements have been taken down, and objections heard.

The tenants seeing this in every Pergunah and office, *feel that effort has been made to do justice*, and this is the reason why our results are generally accepted, added to the facts established by universal enquiry that the mistakes of last Settlement are known to the people to have been very bad in kind, and numerous in quantity.

But I am quite ready to discontinue the *punah* system and to give our awards unconditionally, simply declaring the status found, without inducing the parties to agree to any lease for a period.

Effect of the Act.

The whole aim of the Act is to maintain and elevate all these so called hereditary cultivators to a status of a co-proprietor.

Shareholders, village servants, mortgagees, non-residents. Managers (see above for their numbers.)

Conceive the 30,000 out of 60,000 holders in Umritsur Division alone, who are of the classes in the margin, declared to have a presumptive title upon a record admitted by the mover of the bill to be greatly erroneous, and yet able to exercise all the rights hitherto specially reversed to proprietor as long as they take

care to receive a small share of the profits, and no remedy left to the proprietor but a regular suit, hedged up with such difficulties and absurdities as these.

The landowner to disprove a right which even the old records do not describe as consisting of any tangible features.

(2.) Even though a Settlement was going on, the remedy is not facilitated.

(3.) Only 12 years allowed previous to our rule, within which to prove not the non-existence of an adverse right, but the existence of a custom.

Surely all this will have the worst effect.

The bill, as it stands, would also cause these two difficulties.

(I.) Until there is an agreement or decree of court, all we have done is over ruled.

(II.) In future, Settlement Officers are not to enquire into the facts, correct a mistaken record, or draw up a new one rightly; but merely to regard occupancy according to latter part of clause 5, where 1st April 1849 is entered, in all districts not at present settled; whether the tenants claim the privileged status or not; whether there be mutual relation understood or not; Settlement Officers are to fold their arms and blindly enter all tenants as having rights, who have held for 12 years before that date, until there is an agreement or there is a suit to set aside the presumption.

This being the case, the very thing which the bill, in its preamble, gives out it avoids to do, it silently brings about; viz., to allow occupancy rights to form on a mere lapse of time; whereas the Honorable Mr. Brandreth declares "no occupancy rights shall be acquired by mere lapse of time, but "shall be determined by the custom of the country."

And this is brought about thus; when every one hears of the new law recognizing *rights* and *periods* as tests of rights (which are the very mischief) an amicable Settlement by compromise is impossible. Few Tenants will agree to have their status altered, while under heavy stamp duties and charges for processes, and natural dislike of hard litigation, few of the landowners will be able to sue at the very time when the records should be prepared correctly. The result will be that in reality the Bill will operate very harshly on the landowners, and redress will be difficult, perhaps nugatory; so that, though the bill *seems* to contemplate a large number of the original Settlement entries being set aside, complete and timely redress cannot be given by those who conduct a revision of Settlement.

The procedure in reality, then, becomes such as to render it difficult for known error to be corrected.

Again, I have been asked how can a large number of tenants become co-proprietors under the new Act.

Section 8, creates a tangible tenant right in the shape of *co-enjoyment* of even $\frac{1}{4}$ of the net profits as the least the tenant is entitled to.

Section 12, entitles this tenant to *remission of Rent* in seasons of loss without any reservation in favour of Landowner, who bears all the liabilities.

Section 27, allows the tenant to *transfer* the tenant right in *mortgage* or by *sale*; and the next clause even allows the alienee to do the same, ad- infinitum; a novelty quite contrary to the usages of the whole country.

Section 28, allows him to *sell the trees*, a power never exercised before.

Part IV, Generally, allows him to force the Landowner to improve against his will.

Section 30, even explains that he may *construct wells* and reclaim *waste land* which is perfectly contrary to the recorded institutions of the Province.

Now what is the hidden aim and meaning of all this, but to confer *new* rights and powers, and really to elevate *all* who are recorded as dubiously privileged tenants to the higher status of co-proprietorship; and this without bearing any share of the liabilities, such as losses, in bad seasons, or payment of local taxation (increasing every day) and such like.

Let it also be remembered, that this legal status is held to belong to *all recorded tenants*, never mind how erroneous the records may be proved to be under our recent enquiries. They have the *presumptive right*, until the two processes of Rule 3 and 4 under Section 5 have been gone through at a tremendous cost to the country. Thus it is, I say, that the real effect of the Bill will operate so excessively unfairly on landowners and even make them worse off, than had no such Bill been introduced.

It is a very serious matter, conceive *village servants* and *non-resident tenants* erroneously recorded as having rights of occupancy in the old records, and known every where to be such as *never had any right by custom*, according to universal testimony, thus being presumed by thousands to have rights (open to contest it is true but until contested) the onus of disproof being thrown on the Landowner, when the usage is entirely on his side; and until he can find means to sue, or get a decree all these dubious people are to have the status and powers of co-proprietors as above described.

Is it possible that any man acquainted with the people of this country could have introduced a Bill in Council, the very provisions of which will awaken such an amount of disputing as will flood our courts, and such bitterness of feeling as will take the form of charges against the English Government of desiring to upset the institutions of a Province.

To recapitulate;

(1.) The Bill allows of no enquiry and sifting when Settlements, are being *made or revised* so as to separate the true from erroneous entries.

(2.) Thus all our work in 6 Districts in nearly one Lac of tenant holdings examined by the test of usages as known to exist, is thrown to the winds.

(3.) Titles given by us in thousands, in the shape of Settlement awards, under Regulation VII of 1822, are ignored; and the onus of proof which by these awards was thrown on landowners, whether the entry was right or wrong in former Settlement, matters not.

(4.) *New rights and powers* are conferred *on all alike*, without first allowing an enquiry or clearing out such holdings as are merely ordinary; and so confining these new and extraordinary sections to such as are proved to have occupancy rights alone.

(5.) Even the *new rights and powers* (Sections 24, 27, 28, and Part IV generally) are quite contrary to the known customs of the country, and to thousands of agreements in former village papers; and yet here is an attempt made to give them a legal existence without even consulting the people.

Note.—At the Lahore Committee a resolution was passed that they should not become law, till the people were asked, and in spite even of this effort to be just and fair, the provisions are allowed to stand and the Bill is hurriedly pushed through Council into (Councils) Committee.

(6.) By a mere period of term test (*till* agreement is made or suit is brought) every tenant-at-will even can, under the wording of Section 5, be presumed to have a right in Districts *unsettled and so, on the frontier*, if this period is not cut out, we shall have the whole country in a blaze against us.

Note.—A native member in Lahore Committee, once the famous Nicholson's orderly, got up and said "Gentleman if this clause and the pro-" visions regarding *new rights* are allowed to stand, and the bill becoming law, "is made to have effect on the frontier, I declare to you there will be an insur-" rection (roula) everywhere." In spite of my calling attention to this, no notice was taken of it by Mr. Brandreth and they stand in this Bill to this day.

(7.) As no general sifting is allowed by way of compromise, *previous* to *referring* an objector to a suit in court, every case must necessarily come into court; which will lead to frightful litigation, expense, and ill will, if nothing worse.

(8.) Conceive how harassing, further, it will be when we reflect that, by Section 9, enhancement of rent can be sued for every 5 years, so that while litigation in the form of 2 or 3 appeals is going on by a reduced tenant enraged to the last at this threat being held over him, the Landowner plies the court for enforcement of decree, and brings counter-suit denying his right altogether under Section 5, at any future time. The heart burning and shock to the country provoked by all this litigation will assuredly bring the British Government into disfavour with the rural population who hitherto have been our stand by.

(9.) The Bill professes to have for its aim (see preamble) (*a*) "that "no occupancy right shall be acquired by mere lapse of time," and it appears to be so by the wording of the Bill, but when it comes to work, the converse will take place everywhere, and particularly in *unsettled districts;* and further (*b*) "that they shall be determined by custom of the country," whereas not

one word regarding the custom is mentioned. What is said in Rule 3 Section 5, is not the same thing ; for different interpretations will be put on the words, "holding under similar circumstances in the same or adjacent villages" in different courts. Thus the very appearance of concession seems to be open to every objection.

What is needed. What we really want, are these 2 concessions.

(I.) A *general commission* to see if the principles I lay down on the facts collected and the facts themselves which indicate extensive errors, are reliable or not? If what I have urged cannot be believed there is no other alternative but to allow such a Commission.

(II.) If our facts are believed, then a short Bill to legalize what we have done, if this be deemed desirable ; or a few sections even in this bill, altered to a Rent bill :

(I.) Defining main principles of ordinary *tenancy* and *occupancy right* according to local tests adopted.

(II.) Empowering Settlement Officers to *clear all errors* from a record of error; *first,* by admission of the parties, *secondly* by awards, and *lastly,* if either object, then the objector to bring a suit in court.

(III.) Ensuring thus a regular sift of all erroneous entries, in order that a *thoroughly reliable Register* may be prepared, and in a way that does not require us to record what we know to be wrong. In other words to allow and legalize enquiry whenever a Settlement is in progress; and thus afford a cheap and ready way of redress, without stirring up the country to wrangling, litigation and expense.

(IV.) And having thus effected a ***sift*** and prepared a *Register* ***based on custom*** such as we are now pursuing; and having cleared off such holdings as have no right, to uphold, define, and render ***more*** secure the title of privileged occupancy whenever, and in whatever shape, it may be proved to have existed.

AMRITSUR,
Dated April 18th 1868.

EDWARD A. PRINSEP,
Settlement Commissioner.

ADDRESS OF THE LITERARY SOCIETY

OF THE PUNJAB,

TO THE HON'BLE MR. BRANDRETH, ON THE SUBJECT OF THE TENANCY BILL

AND REPORT

OF THE LAW BRANCH OF THE PUNJAB ANJUMAN,

ADDRESSED

TO THE PRESIDENT AND MEMBERS OF THE ANJUMAN-I-PUNJAB

WITH THEIR

AMENDMENTS AND ALTERATIONS

Forwarded through the Hon'ble J. E. L. Brandreth, Panjab,

Member of Council, to H. E. the Right Hon'ble Sir John

Laird Mair Lawrence, Bart, G. C. B., & G. C. S. I.,

Viceroy and, Governor-General of

India, in Council.

ADDERSS OF THE PUNJAB LITERARY SOCIETY
TO THE
HONORABLE MR. BRANDRETH.

FROM

THE MEMBERS OF THE ANJUMAN-I-PUNJAB.

To

THE HON'BLE EDWARD BRANDRETH,

Member of the Legislative Council.

SIR,

We would desire, in the first place, to express our warm gratitude to you, for the readiness with which you complied with our request to postpone the Punjab Tenancy Bill until further information had reached Calcutta from the Punjab, and expressed your willingness to consider, with care, any opinion of the Anjuman of this province, and we especially rejoice to observe that His Excellency the Viceroy expressed himself in Council to the same effect.

2.—In accordance with your kind permission, we, the Members of the Anjuman-i-Punjab, have the honour to submit a report on the question of Tenant Right in the Punjab, prepared by a Committee chosen from among our number, and adopted by us, with certain amendments.

3.—All classes took part in the discussions of which this report is the result: proprietors and tenants were alike represented. We would especially beg you to remember that the Society is composed of Native gentlemen from all parts of the Punjab; and includes a large number of the very men, who, under the Sikh Government, were the Chief revenue officers, and who are competent to speak with authority regarding the system then maintained.

4.—We would respectfully desire to state that in our opinion no propositions can be more unfounded than those lately advanced, *firstly* that there was no such thing as property in land in the Punjab in former days, and *secondly* that there were no recognized customs affecting the relations between landlord and tenant. We affirm that such customs are clear and generally recognized by the people and that property in land has always existed in the Punjab. The report will shew that, in our opinion, there are no such customs as to give to a tenant adverse rights of occupancy against a landlord.

5.—We would, with the utmost confidence in the generosity and benevolence of His Excellency and the Legislative Council, beg to recall the words of Her Most Gracious Majesty the Queen, in her proclamation of the 1st

November 1858, and to point out that in accordance with her gracious promise, our ancient rights, usages, and customs should be duly regarded.

"We know and respect the feelings of attachment with which the Natives "of India regard the lands inherited by them from their ancestors and we "desire to protect them in all rights connected therewith, subject to the equitable "demands of the State, *and we will, that generally, in framing and administrating "the law, due regard be paid to the ancient rights, usages and customs of India.*"

6.—In conclusion, we would desire to observe that as on this and on other occasions, great injury has threatened to fall on the people of this province, from important measures being passed or introduced in Council without the feeling of the people having been sought or ascertained we would respectfully request that no measure affecting materially the social relations of the people or their ancient righs, usages and customs be introdueed into the Legislative Council before the Lieutenant Governor of the Punjab has been empowered to call together a Local Council, and has thus ascertained the opinion of the people and the facts of the case.

We deprecate, however, all and any legislation which disturbs "ancient rights, usages and customs."

And we would humbly request, that this our petition, with the accompanying report, be sent with the other papers relating to the case to Her Majesty's Secretary of State for India after submission to His Excellency the Viceroy in Council.

We have the honor to be,

Sir,

Your Obedient Servants,

Rajah Harbans Singh.
Nawab Nawazish Ali Khan.
Sheikh Ghulam Mahbub Subhani.
Fakir Syed Shumsuddin Khan.
Rai Mul Sing.
Diwan Ajudhia Pershad Mumtaz-ud-Dowla.
Diwan Baij Nath.
Dewan Shankar Nath.
Diwan Rattan Chund.
Chief Pandit Radha Kishin.
Bhai Charanjit Singh.
Fakir Kamr-ud-din.
Fakir Jemal-un-din.
Deputy Mahammad Hyat Khan.
Muhammad Burkut Ali Khan.
Syed Reza Shah.
Bhai Mian Singh.
Fakir Rukn-ud-din.
Fakir Hafiz-ud-din.
Diwan Sheo Ram Dass.
Hakim Shuja-ud-din.
Bhai Kesra Singh.
Fakir Meeraj-ud-din.
Sirdar Mota Singh, Commandant.
Messer Ram Dass.

Pandit Devidatt Pershad.
Sheikh Nasir-ud-din.
Sheikh Sande Khan.
Fakir Aman Ali Shah.
Nawab Ahmad Yar Khan, Multani.
Misser Sheo Das.
Lalla Duni Chund.
Bhai Nand Gopal.
Lalla Mitta Mull.
Sheikh Rahim Bux.
Baboo Chander Nath.
Pandit Suruj Bal.
Lalla Gopal Dass.
Sirdar Gurmukh Singh, Bastani.
Lalla Sewaya Ram.
Munshi Muhammad Azim.
Pandit Ram Narain.
Doctor Rahim Khan.
Fakir Burhan-ud-din.
Munshi Gopal Sahai.
Munshi Gopal Dass.
Dr. Brij Lall Ghose.
Baboo Nelamber Mookarjee, Pleader.
Pandit Mukand Ram & others.

February 1868.

INTRODUCTION TO THE REPORT OF THE ANJUMAN-I-PUNJAB.

TO

THE PRESIDENT AND MEMBERS OF THE

ANJUMAN-I-PUNJAB.

The Committee of the Law Society having been called upon by your Secretary to report to them on the subject of the "Punjab Tenancy Bill" (No. 4 of 1868) have now the honor to submit their Report.

The Committee will first of all state the materials which they have had before them, and by the aid of which they have come to the conclusions herein stated.

The bill itself was first received, and was at once translated into Urdu, so that it might be available for the study and criticism of the members of the Society and others interested in the subject.

Shortly after this, the minutes of the debate in Council of January 17, were published.

Since this, the Local Government have published the proceedings of the Tenant-Right Commission, which sat at Lahore for the purpose of considering a draft bill, which was the basis of the present bill in Council, but from which it nevertheless widely differs in detail and in some respects also in principle.

The Government have also issued a series of questions which were circulated to all European and Native Officials of standing, and their answers have been printed; a very judicious selection of the worthiest of those answers, which is appended to the printed pamphlet, exhibits most lucidly the results of the observation of some of our ablest offi-

cials. Some of these answers have reference to the province generally, others to specific portions of it.

Besides these papers the Society have before them a series of extracts from all available Settlement Reports, which are extremely important as shewing what the principles were which were acted upon at the former settlement and to the records of which the Tenancy bill proposes to attach so much importance.

With these materials by way of documentary evidence at hand your committee held three consecutive meetings, at which considerable numbers both of members and visitors were present. A great proportion of these were owners of land, several had held office as Tehsildars and Superintendents of Settlement while others had been Kardars or held other official positions under the Sikh Government. At the last of these meetings a number of landowrers, Choudrees and tenants, were also present.

In these meetings no attempt was made to inforce a strict procedure as to passing formal resolutions: they took rather the form of debates, whereat every one had liberty freely to express his views, and state the result of his experience and observation. It has been left to the sub-committee to whom the preparation of the Report was entrusted, to gather up the result of these discussions, and express in a more systematic manner, but as briefly as possible, the opinion of the society on the Bill.

It follows, as the almost inevitable result of this course of procedure, that the Report will deal rather with the principles of the bill, than with the details of its every Section.

In thus Reporting and inviting you also to communicate your views for submission to the Honorable the Legis-

lative Council, we conceive that we are acting in accordance with the wishes of Government. In the Debate in Council of the 17th January, His Excellency the Viceroy himself stated that the Committee would not report finally on certain points till the Lieutenant Governor's detailed "opinions on the Bill itself, and those of any other Gentlemen in the "Punjab, official or non-official, who might like to make their reports" should be before the Committee. With these preliminary remarks, we proceed to consider the principles of the bill itself.

It will be needless to trouble you with any remark on the great importance of the subject. A bill which will vitally affect the future rights and liabilities of all the vast masses of agriculturists from the Khyber to the banks of the Jumna, ought not, most certainly, to pass without full discussion. We will only allude to a sentiment which has found expression even in the Council Chamber, but which nevertheless we are compelled to think a very unworthy one, and that is, that Government officials and European officers appear to be much more eager on the subject than the people themselves. If this statement is intended to lead to the conclusion that the people will be indifferent, and therefore it does not matter what bill is passed, it is a sentiment which is manifestly false. If it means that officials ought not to interest themselves in the question because the people do not do so, it is a sentiment unworthy of any one who wishes well to the country. If indeed it is true, at all, that the people do not take an interest in these questions, is it not because they are totally ignorant alike of the principles on which we are acting and of the nature of the rules which it was proposed to enforce? Is it not because the masses of the people are generally apathetic—because as long as they are not oppressed and their religious feelings not interfered

with, they labor, eat and sleep, neither understanding not caring for the form nor the principles of Government. How many of the people know fully what is meant by "mouroosi" rights, or know what the future effect of these rights may be, as the land and its produce alike advance in value? And if these truths are admitted, is it not rather the duty of those who can and *do* consider these things to take up the subject and try to prevent the adoption of principles which they believe must issue in evil results, and raise discussion and incite inquiry, so that, if there is any flaw in the basis of our legislation on such a subject, it may be brought to notice and rectified.

REPORT

OF THE LAW COMMITTEE

OF THE

ANJUMAN.

The class of hereditary tenants unknown in Sikh times.

1. IT MAY BE ACCEPTED as perfectly well established, that in Sikh times, the distinction between tenants "mauroosi" and "ghair-mouroosi" was totally unknown.

But, on the other hand, it will not do to be led away by mere names, and we have to go further and examine the nature of the tenures which were in actual existence in those times.

To say that any tenants "had any acknowledged rights" of occupation, which one or two writers have done, is to use a doubtfully correct expression.

Rights can hardly be said even to be understood,—far less to be acknowledged, where there is neither law to define them, or an administration of justice, to protect and establish them when so defined.

Custom, on the other hand can exist, for it depends not on a definition of law, but by the common consent of the people who practise it.

The existence of custom.

2. The tenants who in Sikh times paid 'biswi' or "malikana" did so because it was the custom, and the custom was enforced by another custom, that eviction might be practised against recusant tenants. It is only when a Government acknowledges the existence of *customs* or establishes natural rights and then defines and proposes legal sanctions to protect or enforce them, that people can be said to possess rights.

'Right' in Sikh times.

3. If a tenant was evicted in Sikh times, he could appeal to no 'right' in virtue of which he could be reinstated: if he was put back, it was either by the direct power and will of the ruler,—perhaps from a sense of natural equity—perhaps with an eye to the protection of revenue interest;—but on no fixed principle whatever.

The Historical existence before us shews abundantly that the condition and status of all tenants were not the same.

The differences are often due to peculiarity of locality and race: but there are certain general features which are observable throughout, and which ought to be studied if we are to arrive at any correct conclusion as to the position of tenants in Sikh times.

AMENDMENTS AND ALTERATIONS

BY THE

General body of the Anjuman.

4. In the first place the demand of the Government on the land was uniformly heavy, and it became doubly so by the extra impositions, which all grades of revenue farmers and officials laid upon it for their own aggrandisement. The demand too was inexorable, hence every owner of land was obliged to keep his land in cultivation otherwise he would be either ruined or summarily turned out of his estate. Of necessity therefore he had to rely on his cultivators, and consequently the number of a man's "assamis" soon became the measure of his influence and wealth.

The Government demand was then very heavy and a landlord was glad to keep his tenants.

Para. 4.—The Anjuman in the second line substitutes "*generally* heavy" for "*uniformly* heavy" and altogether omits the words, "otherwise he would be either ruined or summarily turned out of his estate."

5. If his land were inferior in quality, or if misfortune fell on his crops—blight, hail, drought or locusts, he was driven to the necessity of securing tenants at any price, and he induced them to remain on his land, by reducing or perhaps foregoing his claim to "biswi" or "malikana" and by allowing them to exercise certain rights almost resembling proprietary rights over the land.

And in order to do so would give them exceptional privileges.

5. The Anjuman unanimously object to the words "almost resembling proprietary rights" and add to this paragraph. "The tenant never acquired the right to sell trees, or sink wells, or transfer the land."

6. The Kardar too watched the state of the land to see that the revenue did not become endangered; if an attempt was made to evict the tenant and the Kardar feared loss of produce he would interfere to prevent the eviction unless the proprietor could give satisfactory assurance of his solvency.

The Kardar only interfered as a revenue matter.

Para. 6.—Anjuman while not disagreeing with this paragraph prefers to substitute for it the following. "The Kardar only interfered when there was a default, the owner refusing or omitting to make good the revenue due from himself or his tenant. So long as the proprietor paid for himself and tenant, no Kardar interfered and his interference *was always a purely revenue matter and had no bearing on the right in the land.*"

7. Thus it happened that all things combining to keep the tenants in occupation, they held year after year, and the son succeeded to it on decease of his father. As seasons and circumstances fluctuated, the tenants obtained concessions from the landlord; or being possessed of means of payment when the landlord had none, they acquired by superior energy many of the rights which the landlord had no means of holding against them.

The tenant thus often became practically hereditary."

8. Accordingly, if enquiry be made, it will be found that here and there, there are tenants who have acquired a position which it would not be difficult to describe as "mustakil,"—confirmed.

Or 'mustakil' confirmed.

9. There were also other causes at work: the owners, or the "malik" class in a village for some cause or another,—whether for their own need, or under the encouragement

The tenants who broke up waste land also became privileged.

of men like Sobha Sing or Sawan Mull, would sally forth, to clear waste lands and found new villages. With the owners went out cultivators who aided them in breaking up the soil; they bore a share of the revenue on the newly settled lands along with the proprietors, and perhaps in times of rapine and plunder, went out to fight their battles also.

The power of eviction was however undoubted.

10. These cultivators became privileged: their status approached that of "malik"; but still the owner classes were above them; *their* names were in the kanoongo's paper as "malik" and uniformly, whether in these latter cases or in the former, they had the power, rarely if ever exercised, but still customary and undoubted, of eviction.

Para. 10.—The Anjuman would omit this paragraph of which it does not approve.

Although circumstances caused it to be rarely exercised.

11. On the Frontier districts, and among the wilder tribes in the Rawulpindi, Jhelum and Shahpur districts, another state of things is observable, but pointing to the same conclusions; the owner class consisted of the powerful warlike clans who went out to battle and took part in every raid, while under them, and secure through their protection, tribes of 'Jut' agriculturists cultivated and held the lands. These were rarely if ever evicted, for to what purpose would eviction have served? So it came to pass that generation after generation passed away, and still the same people held and cultivated; but no one doubted the power of the "malik" to evict if he pleased.

The Sikh rulers only interfered in the interest of the Revenue.

12. The Sikh rulers never interfered with these relations, except it were in the interests of their revenue collections. The officials gladly engaged with the owners for the revenue, where they thought their solvency was beyond question; but as gladly they would engage with the tenants, if they thought the revenue was more likely to be paid by them.

There always was some profit from the ownership of land.

13. We have then always to remember that tenants never *were* turned out because it would have often been ruin to the landlords to do it:—and there was little or no interest taken in the matter, because after paying the revenue, there were no profits beyond a bare subsistence arising from the land, and therefore no question could arise as to who had a right to those profits.

Para. 13.—This paragraph the Anjuman unanimously disapproves. It asserts that always and in the worst of times there was a profit from the land, or it would have been abandoned, that not only had the proprietor full power to evict, but that he constantly used this power when he required the land for himself or for other tenants.

And the idea of a term of tenant occupancy creating a prescriptive right never existed.

14. As to a theoretical right of a tenant to remain as such after he had held for a fixed period, we can unhesitatingly assert that such a thing was never dreamt of, and that if such a right has been established it is simply and absolutely the creation of the

Para 14.—The Anjuman desire their special and unanimous approval of this paragraph to be distinctly recorded.

British Government. We are of opinion therefore, seeing that such a right never existed among the people, that there is no reason why it should now be created. It will be much better to take things as we find them and give people the status they have always practically had, without seeking to invent new rights or create new disabilities unknown to ancient custom and distasteful to the people.

15. We here must state our firm conviction that in the vast majority of cases where cultivators have been, (otherwise than on the admission of the owners) recorded as "mouroosi" it has generally been on the principle that they had cultivated for 12 years or in some cases less. And as to cases litigated in Court after Settlement, we believe the principle to have been of universal if not of exclusive application.

Tenant have generally been recorded as hereditary on account of 12 years occupancy.

16. The bill itself however proposes in all future cases to disallow this principle, as by section 7 it enacts that the mere lapse of time shall not create any right of occupancy.

Which principle the Bill disallows.

17. We therefore have the important enquiry, whether, excluding those tenants whose right to occupancy is based merely on a 12 years' tenure there are any classes of tenants who, in view of the circumstances and conditions before adverted to, have upon principles of natural justice and equity a right of occupancy.

Have any tenants a prescriptive right?

18. We admit that there may be—we think not many; and who they are must be determined by careful enquiry into facts. It is not as a rule any *one circumstance* that will make it possible to determine whether the particular tenant should have any right; it is a combination of circumstances.

This the Anjuman does not directly deny.

19. Some people assert that this class of tenant is numerous; if it is so, investigation will prove who is right; but whether the number be great or small is ABSOLUTELY IMMATERIAL to the enquiry; since it is obvious that the adoption of true principles will be equally advantageous in either case.

And their number is immaterial.

20. We consider that it is perfectly feasible to deduce from an examination of actual cases a number of principles which might be laid down as general but not absolute *criteria*.

General principles can be laid down.

These, while serving as guides to the decision of cases, would not prevent due notice being taken of exceptional or local peculiarities.

Some tenants are realy in this position of landowner.

21. In the case however of the, tenants described in Section 4, we are agreed generally that they ought to have a right of occupancy, because really they *were* owners, and therefore the two parties can be looked on in another point of view,—*i, e.*, we need not look on the present owner as really owner, and the old owner as reduced to a mere tenancy: but we can look on the former 'malik' (the present tenant) as an owner, somewhat shorn of his rights, and the new owner (or present malik) as a person who has acquired a right to levy a certain cess or "biswi" and who has a reversionary interest in the land and nothing more.

Section 4 is not sufficiently explicit.

22. But we think the Section should be more explicit. It no doubt means that the owner should have lost his rights in his own life and not that his ancestors lost their right; this might be made explicit to prevent the possibility of mi stake.

And should be more strictly defined.

23. Moreover, the loss of such rights should be confined to the effects of enemies or alien power; for if the person lost his rights either by the forfeiture of present or former Governments (2) or by the operation of the law.—as in execution of decree or sale for arrears of revenue, or (3) by the consent of the parties in any way, we are decidedly of opinion that even if he has regained his place but *as a tenant*, there should not be annexed to such tenancy any greater rights than those of an ordinary tenant-at-will:—for the arguments which (as above stated) apply to the case of an owner, turned out by superior force, cannot apply to the case of an owner, who has ceased to be such by the operation of any other cause.

Scarcely any other class is entitled to claim a right of occupancy. There are no adverse rights as againts a proprietor.

24. Besides tenants of this kind (who probably only exist in certain parts of the Punjab) we do not think that there is any ground for assigning an indefeasable right of occupancy to any class of cultivators, excepting perhaps, the case of those who assisted at the founding of a village or breaking up new land and have thenceforth held continuously or whose tenure exhibits exceptional features when judged of on its own merits and by the light of the criteria above alluded to. Many tenants, in these circumstances, have by the lapse of time acquired actual proprietary rights, and in the case of those who have not advanced so far, we think it questionable, whether an ab-

Para. 24.—To this paragraph the Anjuman makes the following addition. "The "tenants located by the Sikh Government "must be admitted to have an adverse right "of occupancy, and *they are virtual proprie-* "*tors.* This class though well defined, is "insignificant and not numerous, as has "been asserteds."

The Anjuman would desire to record its opinion most strongly and unanimously against the theory of adverse right of occupancy, on the part of tenants. Numerous tenants have by force or fraud or by the action of the Government become proprietors, and this fact the Anjuman has no wish whatever to dispute. But there is no such thing as an "almost proprietor" a, "qarib malik," nor adverse right of occupancy against a proprietor.

solute right of occupancy should not be conceded because the argument given in the case of tenants under Sec. 4, in relation to their maliks or owners, would apply to them also. The people themselves do not draw the same distinction between these tenants and the superior owners, that they do between the landlord and other tenants: they are really more like an inferior kind of owner and the 'malik,' so called has only a right to certain specified dues, and *never had* anything else. But even in these cases, as long as the engagement for the Government revenue is made with the *owner* or 'malik,' he must have right of enhancing rent under proper conditions, and certainly might have a right to eject the tenant for misconduct or destruction of the estate. With the exception then of cases above described, we consider that there is no *class* of cultivators who either by the sense of the people at large or on any other grounds ought to have a right of occupancy.

No hardship would result from the refused to admit a right of occupancy.

25. We have no fear that the refusing to acknowledge an indefeasable right will result in hardship to any one: indeed we believe the result will be just the contrary. At present every one looks askance at his tenants and is forced to shift them from place to place simply out of fear lest a few years' residence on one plot of land should be held to have conferred obnoxious rights: and the evidence on the whole shows distinctly that the result of the arbitrary creation of rights on the sole ground of 12 years tenure, has tended to a great extent, to introduce a feeling of bitterness between landlord and tenant. If the owners were secure from the possibility of their status being impaired by the gradual growth of such adverse rights, all cause of dislike and distrust would be removed. There is not the slightest reason to suppose that evictions will be frequent: it is still to the owners interest to keep in their tenants. If a landowner is harsh to his tenants, he will soon be brought to his senses because he will find no one willing to cultivate for him: moreover if a tenant is turned out he will easily be able to get a place somewhere else, as there will be no fear of admitting him. The answer a tenant made in one of our meetings deserves careful consideration.

"In the Sikh times if we were turned out, "we could easily get admitted elsewhere, now, "if we were once turned out no one else would "ever let us on to his land for fear of our be-"coming "*Mauroosi*" there also."

Tenants should however be protected from eviction at improper times and should receive compensation for capital expended.

26. But while we would not concede indefeasable rights of occupancy to any class beyond those described above, still we are fully alive to the necessity for affording protection to tenants from eviction at improper times, or from the loss of capital

Para. 26.—In the sentence "if wells have been sunk or other improvements made," &c., the Anjuman would insert "*special*" before "improvements."

expended on the lands they occupied. If they are turned out, it must be at a proper season of the year: and crops must be duly compensated for. If wells have been sunk or other improvements made within 20 years previously (the period as fixed by the bill we think quite resonable) no doubt compensation must be paid according to the circumstances of each case. We trust that we shall not be misunderstood on this point.

27. From these remarks it will be clear that our views are entirely opposed to the tests proposed by Section 5 for ascertaining whether a tenant has hereditary rights or whether there is a presumption of his having such rights.

The Anjuman is opposed to the tests of section 5 of the Bill.

28. If a tenant has hereditary right they will only exist by reason of the circumstances contemplated by Section 4 or by reason of that combination of incidents to which we also alluded.

And considers only the circumstances contemplated by Sections 4 can create hereditary right.

29. If indeed such tenants were entered as "mouroosi" in the records, the validity of those rights is dependent on the merits of the case not on the mere fact of entry. And for all other cases, we have merely to say that if they were entered they must have been entered on a wrong principle, that is, on the principle of *mere* length of occupancy.

The Record entry is valueless being based on a wrong principle.

30. But what ground is there for regarding the Settlement Record as any criterion? We forbear to repeat the passage of Mr. Prinsep's letter quoted in the Hon'ble Mr. Cockerell's speech in Council on January 17th.

Besides this it cannot be accepted as reliable.

31. That Extract is, we have no hesitation in saying, nearly if not absolutely correct. Several of our members who have had practical experience of these things, state that the forms of settlement papers were adopted from the North West Provinces. There the status of 'hereditary cultivator' existed or was believed to exist, and hence in all the statements there was a double column for cultivators,—'hereditary' and 'non hereditary.' The Amins and Putwaris in the Punjab being supplied with similar forms had to fill them up on the spot: they came to a cultivator and asked him; he had never heard of such a thing as "Mouroosi" and could not tell which to call himself. The Amin had of course to determine:—he therefore asked the cultivator how long he had cultivated? and if he said for 12 years past or even less, his

Having been formed on the most superficial enquiry.

name was put into the Mouroosi column; the owners did not object and why? because they did not understand any more than the cultivators what the phrase meant.

32. At these settlements the people had not yet got to understand and trust their rulers. The Sikh wars were just over. Many landowners were the very people who had taken arms against the British Government, and they were afraid to come forward: there was therefore no opportunity of free enquiry and discussion as to the existence of such rights, and the consequence was that the great majority of entries were made by a sort of mechanical rule, based on no intelligent enquiry or ascertainment of fact or custom whatever.

The people were ignorant and afraid to advance what they believed were their rights.

33. We do not say that *all* Settlements were the same and that all records were wrong—far from it, but all the cases that are rightly entered will stand on their own merits without the adventitious aid of a legal presumption arising from the Settlement, and those cases which in fact have no merits ought not to be supported by a mere fiction of legal creation. The other test proposed by Sec. 5, is equally bad: first, because mere length of occupation ought not to create a right of occupancy in these cases and indeed this principle is recognised in another section by the bill itself: and secondly because the period proposed just takes us back to the years succeeding Runjeet Singh's death, when the affairs of the country were in the greatest state of confusion, and when it was least possible to ascertain really what a man's position was.

Some Settlements more carefully made, and the record, in these will be probably correct.

34. To all this no doubt some persons will be found to reply, that in those cases where hereditary rights have been once recorded at Settlement, it is not just now to alter the status or declare that the parties have no such rights as those recorded. But, in the first place, we observe, that there is nothing in the nature of a Settlement record itself, that imparts any binding effect to the entry,—at any rate after the period for which the Settlement was made has expired: and in the second place, that the existing law of the land clearly contemplates the correction of erroneous entries on the Record; and thirdly that no hardship or difficulty would result from setting right the errors complained of. If a person has actually acquired possession of certain property in consequence of the operation of certain laws, it would be no doubt hard to deprive him of such possession, even should the law under which he obtained it be discovered to be erroneous. But in the case of these recorded rights there is no such difficulty: the

The alteration of the recorded Status would not be a hardship and was clearly contemplated by the law.

tenants would not be *in fact* turned out, nor would they lose the benefit of any improvements they might have effected, only they would be informed that their right of indefeasable holding, and right to pay at fixed rates, not liable to enhancement, ceased. *No practical* difference would result to the tenants nor would any hardship be felt.

At any rate the proposed Bill dose alters the status.

35. If, however, it should be urged that we cannot possibly alter a *status* which we have as it were pledged ourselves to maintain: then we answer that the bill itself disposes of the plea. For it is incontrovertible that the bill *does* propose to change the status.

The Settlement records did not intend only to raise presumption of certain privileges.

36. When a man was put down as "Mourossi" in the Settlement papers the meaning of the entry was, (if it had any meaning at all,) that he *was* an hereditary tenant and that he *had* an indefeasable right, not merely that he was presumed to have it; it cannot be for a moment supposed that the Settlement Records intended only to *raise a presumption* of these privileges. Hence, it is perfectly clear that the bill *does* propose to change the status acknowledged at the time of Settlement: and if it proposes to change it so *far*, why should it not acknowldge the error altogether? especially when such acknowledgment is clearly required to obviate injustice.

But to abide by their manifest errors is to perpetuate injustice.

37. It is necessary for us to put this injustice in a clear light. Excluding that class of tenants properly allowed to have *rights*, the effect of our 12 years' rule has been simply to curtail the rights of owners, and deprive them of the full benefit of proprietorship by saddling them with certain disabilities which were certainly not existent under native rule. To abide by records prepared upon the principle of 12 years' occupation giving a right is to perpetuate injustice: simply to declare that this record is nôt to be a criterion, but that the results of a careful enquiry *as to facts* is to be, would create no practical difficulty whatever.

The onus probandi the right of occupancy lies with the tenant.

38. If a landlord wishes to turn out a tenant and the tenant thinks he has a right to remain, do not let there be any legal presumption arising from any records or otherwise; simply let the tenant prove the existence, in fact, of that combination of conditions which will give him the exceptional rights above alluded to. What hardship is there in putting the burden of the proof on him? Surely, if it is admitted that occupancy *rights*, are only exceptional and not the rule, it is only in accordance with the common

Para. 38.—The Anjuman desire specially to record their unanimous approval of the principle of this paragraph.

rules of evidence, and in accordance with common sense, that the party asserting and seeking the benefit of exceptional circumstances should prove them.

The Anjuman considers the principles of Sec. 5 erroneous.

39. On these grounds therefore we have come to the conclusion that the principles involved in Sec: 5 of the bill are erroneous.

And also objects to every question being taken into Court.

40. We equally object to all those provisions of the bill which have for their object the determination of every question through the Civil or Revenue Courts.

Our reason for this is that the majority of such questions can be best left to settle themselves.

All "free trade" in land is ignored by the Bill.

41. The bill seems to ignore all principles of what we may call 'Free-trade' in land, as well as utterly to overlook the fact, that people act for their own profit. This bill seems to regard the land-owner as a dangerous being whom it is desirable constantly to restrain from enhancing rent, evicting and persecuting his tenants.

Of which the rules for enhancement of rent are an example.

42. Let us take the case of the enhancement of rent. Even if it should be held that those tenants, to whom we would concede occupancy rights, should not be liable to enhancement save on decree of Court, still, in all other cases, we think it would be quite safe to leave all questions of enhancement to be a matter of agreement, just as it is in the case of house-property. If the tenant does not like to pay the rent which the owner thinks he ought to get, let him go elsewhere. An owner who is foolish enough to try to grasp an unreasonable rent will soon be brought to reason by finding that no one will cultivate for him. It is exceedingly unlikely that an owner would demand such a rent as would drive a good tenant off his land.

And in a still more objectionable way Sec. 26.

43. But another still more objectionable instance of interference is that contemplated in Section 26. We desire to intimate our unanimous and unqualified dissent from this proposal.

44. The necessary results of what we have before said is, that, of course, when ever the owner wants his own land, he will be entitled to recover it, on giving due notice, and paying compensation or accounting for crops, or both, as the case may be.

45. In the exceptional cases of hereditary tenure there is no need to provide for such eviction at all.

46. But this section only shows how lamentably every attempt to compromise between right principles and wrong ones must fail. Would not it be in the highest degree undesirable to bring into the public Court the whole history of a man's family circumstances? Moreover, we believe, that such proof as that contemplated in the section could not be given: we do not understand how a man would go about to prove, that the land he held was insufficient for the support of his family. Also what legal meaning would be attached to the term "sufficient for the support?" how very vague the whole idea is; how practically nugatory! On looking over the answers sent in to the Local Government on certain questions before alluded to, we observe, that all the ablest replies object to a provision such as that contained in section 26.

Which is exceedingly vague and indefinite.

47. The standard of compensation proposed, viz., the market value of the land, seems to us so erroneous that we can really only wonder at it being even mentioned in the bill. We must also beg leave to question the argument with which this standard was supported by the Hon'ble Mr. Brandreth in the Council. The Hon'ble gentleman says that the market value being so far below the real value of the land is even less than a full compensation for the tenant's rights: but is the market value never to increase? Is it not rather increasing every year, till very shortly it must come to be the real value of land and *then* can it be argued that a tenant's compensation is to be valued thereat? If so we can only ask what is the difference between the tenant's property and the owner's? The bill is surely not intended to be an ephemeral one, hence, as soon as the market value ceases to be below the real value, Mr. Brandreth's argument must necessarily fail.

And the standard of compensation proposed is utterly erroneous.

48. We do not see any way out of the difficulty save by the adoption of the principles we advocate: any attempt to make a compromise between right and wrong as the bill does, is sure to lead us to endless perplexities and contradictions.

Compromise is dangerous in the present case.

49. We will only bring forward one other instance of the unnecessary interference of the Courts, and that is the provision of Sec. 30, whereby the tenant can require the landlord either to make improvements or he may make them himself. This is a matter which it is obvious to us can most safely be left to adjust itself.

Interference between the landowner and tenant as to improvements is an evil.

50. We will not detain you with any lengthened remarks on the great evils which this perpetual referrence of questions to Civil Courts will bring about. Nearly all the questions

And the system of referring everything to the Courts is utterly bad.

which are so treated by the Act are of such a nature that a mass of evidence will be required, and sometimes protracted local enquiry be inevitable before they can be settled: and besides this, we must take into account all the vexations and delays that a suit involves, the passing to and fro between the Courts, the going up in appeal from Court to Court and the fostering of a litigious spirit already too strongly developed among the people.

To the transferability of occupancy rights the Anjaman is opposed.

51. There is only one more principle involved in the bill to which we will advert, and that is the transferability of occupancy rights, Sec. 27 proposes to allow a tenant to sell or mortgage his right.

Tenants had no right of transfer formerly, and it is unjust now to confer it.

52. To this we are wholly and unanimously opposed. To theorize as to the propriety of such a transfer is idle: what we have to do is to examine facts. Now if there is one thing clearer than another in the evidence, if there is one principle uniformly to be met with in all Settlement reports it is this: that tenants had no right to sell or mortgage. In face of this fact to introduce such a power, is simply a gratuitous injury to landowners. The absurdity of the section is still more apparent when it is remembered that only the tenant who *has heirs* is allowed to transfer. If a right of transfer exists at all, to restrict it in this way is unreasonable; but the framers of the bill (who appear to be perpetually aiming at a compromise) perceived that to allow a man without heirs to transfer would practically be equivalent to depriving the owner of the title he has —the reversionary right on failure of heirs of the tenant. It seems to us that it is only necessary to state the propositions contained in this section to refute them.

Para. 52.—The Anjuman add to this para the following remark: "Section 28 of the Punjab Tenancy Bill which allows a tenant to plant, cut and sell trees upon his holding, confers upon him a right which he never before possessed and which there appears no reason now to give him."

The suggestion of allowing either party to buy out the rights of the other is not approved by the Anjuman.

53. We propose now to close this report by briefly summing up our conclusions in the form of several propositions; but before doing so, we wish to call attention to an admirable suggestion of MAJOR DAVIES which perhaps has hardly received the attention it deserves. In the case of Copyhold tenures in England, it was proposed to get rid of the inferior rights by compelling one party to buy out the rights of the other; we certainly think that as we admitted *some* persons to have occupancy rights, that every encouragement might be given to a similar course. But Major Davies considers that a plan actually to divide the land between the "Malik" and the Right-holding tenant would be successful. Each would then have the full and unincumbered proprietary right of his own plot. We believe that such a plan would be in many instances accepted with great satisfaction.

Para. 53.—From this paragraph the Anjuman dissents. The members hold unanimously that any interference or compulsory division of the land would be most distasteful to the people, and entirely unnecessary as such a matter could be arranged far more satisfactorily between the landlord and tenants by private agreement.

Summary of the Anjuman's opinions on the subject.

54. The result then of our deliberations may be summed up in the following propositions.

1. That no persons have, or ought to have, any rights of occupancy excepting such as are contemplated by Sec. 4, and such as owing to special combination of circumstances (to be determined in each case by enquiry into facts) can be reasonably held to have such rights, according to the sense of the people at large and when judged of by certain criteria which are ascertainable as the result of enquiry into fact.

2. That those cases in which rights are conceded must depend on their own merits, and not upon any mere entry in Settlement records, or on an arbitrary fixed period of duration.

3. That as the bill itself proposes to alter the status of so called hereditary tenants, and to prevent in future any such tenant right being created by mere lapse of time, that principle ought to be extended to all tenants, and that no hardship will be caused at all, by simply ignoring tenant right as formerly defined and acknowledging only such right as really exists.

4. That if these principles were carried out, the majority of the references to the courts contemplated by the bill would be unnecessary: also that the bill is erroneous in principle, inasmuch as it practically ignores all power of things to settle themselves on known principles of action, and as it ignores all free trade principles.

5. That legislation on the question is only wanted to repeal existing erroneous rules, and provide for proper rules as to eviction, compensation and the like ; but that legislation interfering with questions that people can settle for themselves as they do in the case of other kinds of property, is not wanted but will lead to evil results.

Para 54.—In Proposition I, the Anjuman would insert after "the sense of the people at large" the words "and the custom of the country. To proposition 4, it would add the words "and is opposed to the recognized custom of the country." In Proposition 5, it would insert the word "special" before the word "compensation."

With the above amendments and alterations the report of the Law Committee is accepted by the General Body of the Anjuman as expressing accurately their views of the proposed Tenancy Bill, and the question of Tenant Right in the Punjab.

THE ARGUMENTS ON THE TENANT SIDE WITH THEIR REFUTATION.

MEMO. SUBMITTED FOR THE PERUSAL OF HIS HONOR THE LIEUTENANT GOVERNOR, CONTAINING THE CHIEF ARGUMENTS BROUGHT BY THOSE WHO ARE OPPONENTS TO ANY RE-OPENING OF TENANT'S STATUS; AND HOW THEY ARE ANSWERED BY SETTLEMENT COMMISSIONER.

Arguments against.	*How refuted.*
1.—That the status of Hereditary Cultivators was assented to by the proprietors at last Settlement.	1.—Proprietors, were never asked. It was the Putwaree who entered them on the 12, or 20, years' test rule, which was never authoritatively laid down.
(a.)—Witness their long silence.	(a.)—Complaint and irritation everywhere. Hundreds of petitions have been made to the Courts, when the proprietors have been told the Settlement Records only can be upheld. The *new* evidence, in replies to 8 questions, shew, unmistakeably, that this irritation is *great* and *general.*
2—That principles were laid down at last Settlement and there was an enquiry.	2.—There was *no* enquiry in any of the Districts we are now touching, except Goojrat. There was a confronting and enquiry here, such as we are now making everywhere; so we have left Goojrat alone, and are righting the other Districts. Does not this shew fair play on our part? Indeed, there was no enquiry before; See (1) Settlement Reports, (2) the old Records of attestation and (3) the (Khuteonees) field abstracts of last Settlement. (4) Financial Commissioner, Mr. Roberts, is now perfectly satisfied on this point. Thus I declare, still there was no enquiry. As to *principles*, there were none at last Settlement, except the period-of-years' test; and this was repudiated by Sir John Lawrence in his letter of 1855, and Officers were told to look into the *nature* and *customs*. This has never been done; so we are trying to remedy this important omission.
(a.)—There were the proceedings of former Settlement Officers.	(a.)—I can't find any, in any District, except Goojrat. This is a fact. Here is another fact: the Settlement Reports either are silent, or say the status was "entirely create

"under our rule" (Lahore Report, Mr. R. Egerton); was "conceded to a large proportion of the cultivators" (Mr. Davies, in Goordaspoor Report). In Sealkote I use much the same words, "on these (cultivators) have been conferred a "right of occupancy, as in other Districts (Sealkote "Report). Mr. Cust, reporting on Pergunnah Shukurgurh, says this right "was created in the Pergunnah, as elsewhere, "by the Settlement Officer." Captain Elphinstone, in Gogaira, writes it "was a creation of our Government, and was "altogether unknown under the native rule." Mr. Morris says, in Goojranwalla, "the proprietors have been only too glad "to give up to *all* their cultivators the right of possession," shewing that it was only given up then, at Settlement. Does any one believe that any such voluntary real surrender was made of the right of eviction, if exercised before?

Look to Appendix VII of Part I of my printed papers; and this vein of admission runs through all the extracts from Settlement Reports of the Districts where we are now acting; or they were silent, as Mr. Barnes is in Kangra. Every one knows there were no proceedings there.

(*b.*)—There were a series of Judicial decisions.

(*b.*)—Perhaps 300 or 400 cases in a Settlement. Look into these; the main principle was the 12 years' rule which was repudiated so late back as 1855, by the head of the Province, and has been authoritatively laid down in no Regulation; not even in Mr. Thomason's directions in plain words: so this objection is not established, nor of weight.

(*c.*)—The spirit of the Regulations recognized occupancy rights.

(*c.*)—No such regulations were in force, or ordered to be followed, in the Punjab. Settlement Officers were told to follow *custom* in their general directions. Chief Commissioner confirmed this principle in 1855. This is exactly what has not been done. Regulation VII of 1822, was the Settlement Officer's rule to go by. That Regulation required them to go by *existing usage*, not on policies. This is exactly what was not done; so this argument amounts to nothing.

3.—If proprietors had any objections, why did they not make them at last Settlement.

3.—Simply because there *was no enquiry into the facts of usage or relations as current in the country*. The Court chose to accept a 12 years' rule, which was no where enjoined; and landowners, seeing this to be the test of such rights, gave in, at a time when we, as rulers, were *new* to the country. Our Officers knew little as to the ways of the people and because, in the Districts now under revision, the Revenue was so *highly* fixed by British Government there was no margin of profit to raise the question.

4.—Whatever was the principle, a principle was followed by Settlement Officers.

4.—Simply, I repeat, here there were *no fixed principles*. Each Officer went his own way. The Settlement Reports were sanctioned generally, not with reference to any particular allusion to this question.

and their Reports received sanction of Government. It is not right to throw doubt on the stability of this as a fact accomplished.

These Reports for Goordaspoor, Amritsur, Goojranwala, and Kangra, were reported in 1853,-54. One year after, viz ; in 1855, the alleged principle of the 12 years' rule was flatly repudiated by the Head of the Province, and a controversy was going on the whole question, on its merits between the Financial Commissioner and Chief Commissioner, of that day. It cannot be said, that the matter had been finally decided. It was, and has all along been under consideration.

5.—Any principles now followed must be new; and so, if the question is allowed to be re-opened, all Settlements previously made will be affected.

5.—Not so, if Regulation VII of 1822, was followed, viz ; to go by "existing usages;" where the law was attended to, there former results will stand, as in Goojrat; where it was not attended to, where there was no enquiry, it was an irregularity, or mistake, or omission. The object of a Revised Settlement is at all times to put this right.

No *new* principles are being now followed by Mr. Prinsep. He merely confronts the parties, takes down their (A) agreements or (B) declares, by official proceedings, the existing tenures under Regulation VII of 1822, Sec. 14.) If any Settlement has been conducted not on this principle, surely it has to be corrected.

6.—As to the rectification by agreements (*a*), this is not objected to, (the new act allows this); but the second process (*b*) of the Revised Settlement is thought likely to do mischief :—because,

6.—The alternative process is the only one recognized by any Settlement Procedure. The question is, was the entry contrary to fact or not. If it was, and was not the result of a previous order or enquiry, clearly it is the duty of Settlement Officer to amend the Record.

(*a*) It allows a general re-opening.

(*a*.)—Whether it causes a general re-opening or not, is another matter. If there is a complaint, or objection, raised at time of attestation, it must be attended to.

(*b*.)—Settlement Officer should accept the mistakes.

(*b*.)—Settlement Officer is to accept the mistakes because they are general. This is some thing new; why then, the necessity of any Revised Settlements unless it is to rectify mistakes; what officer will agree knowingly to enter that which the mere statement of the parties on an enquiry before the whole village, at once proves to him egregiously wrong ? who will do Settlement work on such terms ? against conscience, common sense, equity, and village custom.

7.—We will allow the error to be amended but not in the mode pursued, viz : not by the Settlement award plan; for these reasons :—

7.—Rectification, then so far conceded; but the procedure is objected to, which, after all, agrees with the only Settlement procedure which exists, viz. Regulation VII of 1822, Section 14, why is this to be set aside ? The law has not been repealed. It is not objected to as furnishing the way for rectification of *all other* mistakes, as between

owner and owners? Why this refusal as regards mere tenant entries.?—

(a.)—That the mere fact of Settlement entry before unobjected to, for 10 years, amounts to a proceeding of Settlement Officer.

(a.)—Certainly not, according to the interpretation of the above regulation, as now being put in force in N. W. Provinces and in all Revised Settlements. If there are any official proceedings of former Settlement Officers; then we respect them, so far we agree. But we have shewn there were no such proceedings, and a mere entry in a Register now declared and proved to be wrong, has no Judicial, or executive force.

It is here where our opponents appear to be wrong, when they require all such cases to be rectified by a Regular suit.

(b.)—That such entry can legally be put right only by a regular suit.

(b.)—This is an utter fallacy. If there has been a previous Judicial proceeding, it is clear it is a *res judicata*; such cases cannot come into court. If there has not, the object of Revision of settlement under terms of Regulation VII of 1822, is simply that such erroneous entries should be put right by official proceedings, now taken.

(I.)—That accuracy may be obtained.

(II.)—That the setlement may not be obstructed.

(III.)—That the parties need not be put to needless expenditure.

This proceeding being recorded to satisfy the Judicial Officers who are thus empowered to record nothing but what, to them, is proved to be the existing tenure (not as known to Government or as in the old record, because it is in that record but) according to what is accepted, or known, or found, to be the *fact* in the country.

This done, Settlement Officer declares on whom rests the onus of complaint, and refers the objector to the correct finding either.

(I.)—To appeal summarily,

(II.)—Or to bring a suit. So that a regular suit is encouraged by our proceedings. There is room for ample remedy, only we declare who is to bring the suit, and it is manifestly right, and the intention of the framers of the Act (Regulation VII of 1822,) that this should be so, or why is *summary* power given at all to draw up Settlement Registration.

(c.)—That if a presumption is not given of accurate entry to the person so entered, it allows

(c.)—There *is* general complaint and irritation. The whole question has been under consideration. The mistakes are proved to be great and numerous everywhere; no one attempts to deny it.

too much power to Settlement Officials to disturb what has been previously accepted, or affirmed.

If so, then where is the justice of making special provisions for tenants of the class so recorded, when the whole Regulation (VII of 1822) allows Settlement Officers the legal powers to amend any, and all, errors on complaint, and proof, of error.

(*d.*)—That the tenants are placed at a disadvantage after 10 years further occupancy.

(*d.*)—Not so, for no one (it is to be presumed) wishes to maintain any rights for them, but what they have *bona fide* acquired, adverse to the proprietors. The whole enquiry shews that adverse position has been seldom acquired as against the proprietor, but from a mistake of our officers, by action taken by our Government, or rather inaction, for not deciding any principle in time for previous Settlement officers to follow; and surely it will be admitted that the English Government had no power to *confer*, or *create*, such rights if they never existed before.

On the other hand, if such rights are established and can be proved, every opportunity is afforded of investigating and deciding them: so that the recorded tenant has the same justice meted out to him as the proprietor and in the one and same enquiry. If proofs supporting presumption are adduced, the status is upheld; if not, then an award is passed.

Where is there any hardship to the tenant in such a procedure?

8.—It is urged that there is hardship; for the awards are given under pressure of misconception by tenants.

8.—If there has been hardship, we are ready to review each case, even before English Officers.

(*a.*)—Under pressure because, notably, it has gone forth that there are to be no occupancy rights hereafter.

(*a*)—No such order has been issued: every case is specially gone into.

(I.)—The parties being confronted.

(II.)—The whole village being present.

(III.)—Any witness can at once be called.

(IV.)—If preferred, a regular suit is entertained: some have taken advantage of this.

(V.)—A jury of mixed interests help the officer.

(VI.)—If still not satisfied, the tenant or proprietor can appeal summarily.

(VII.)—Or bring a regular suit.

(VIII.)—For greater publicity, a notice is given to each tenant of his new status, as thus awarded; and it is inscribed on each of these if they have further objection they can bring a regular suit.

Where is there pressure in all this?

If the *effect* of such enquiries has been, that the whole status is to be abolished, surely both parties must have seen there has been a careful sift and why this sifting, if not that justice should be dealt out impartially?

No such announcement has in reality been made, all our proceedings have shewn an effort to give fair play. If this was not the case, why are there no more complaints?

(*b.*)—Under misconception, because protective leases have been given with the awards for certain periods, and the tenants not seeing any difference in real action, as to their status, have not realized what has been done.

(*b.*)—I admit this is *the* weak point of all our procedure and it has given a handle for the objections.

It can be easily discontinued. I mean that we can avoid inducing the parties to agree to a lease as an alternative. The proposal has often come out of a wish expressed by both parties. The reason urged is this. For 10 years, right or wrong, these tenants have held "under protection "given by Government, and 4 or 5 first years, were bad "years when a money settlement was oppressive; now that "the day of profit has come round, the proprietors say, well we can afford to give a lease, to compensate for the erroneous protection given by Government; surely there is wisdom and leniency in this.

But if it is believed to have the effect, or if it will have the effect, of *postponing* the real conception of the terms, as now recorded, then it is better to discontinue this, and merely declare the tenant has no right, leaving the parties to come to an agreement themselves, and perhaps increased efforts will be made by the tenants, thus to assert their position.

If this, so much the better; we have no objection whatever, and it is safer to remove every objection at once.

I believe the objection exists really in the minds of English officers only, or why this singular absence of all complaints all over the country. Every one knows what has been done, for he receives a copy of the Field abstract (Khuteonee) defining the terms of tenancy as now declared. Every one sees there has been a regular sifting and application of the minds of native and English officers to the adjustment of this grave matter. They have seen that suits are instituted, heard, and appealed, and yet the general result is accepted all over the country.

If I have any knowledge of the ways of the people, I can ascribe this to one chief cause, viz: *the fact of an enquiry having been made before the whole village in open courts where statements have been taken down and objections heard.* The tenants seeing this in every Pergunnah and office, *feel* that an effort has been made to do justice. This is *the* reason why our results are so generally accepted.

9.—So also objection is taken to the system of employing assessors to help the enquiry.

9.—This is allowed to Settlement officer by Regulation VII of '22 and IX of '33 also by Thomason's directions. It is a safe plan, as it guarantees, if done in open court, that the meaning of objections is heard, and that regard is being paid to usages as known to exist.

(a.)—Because, mainly, they may become packed jurymen, the sense of ownership and wish to evict, being too strong in these days of profit and prosperity among all classes.

(a)—There is something in this. Still it is the Judicial Officer who has to satisfy himself of what is correct. The juries are made up of *both* interests, men from both classes: what more can be done here, than is done in any enquiry where interests of two parties are concerned?

It is a weak objection. My own experience is unmistakeably this, that I have found this system a great help in the way of eliciting the real facts. Not only as regards tenant right, but all matters which Settlement officers are expected to ascertain.

10.—Then it is urged, the mistakes are not so frequent. There really was no property in land in former days. The Sikh Government did as they chose.

(See Sir W. Muir's speech Page 53 in Proceedings of Legislative Council dated 17th Jany. 1868.

10.—If there was no property, why any enquiry at last Settlement, and now, into the existence of ownership. The proofs of decided ownership are given in Part III para. 99, and 100, in 16 positions.

The Sikh Government and its Kardars did not interfere with existing subordinate relations; but merely with Revenue, in the same way as the English Government interferes in support of its Revenue system by preventing sales, recognizing pre-emptive rights and transferring to strangers in default of Revenue. When proprietors failed to make good the revenue of the tenants, then the Sikh Kardars interfered, as a rule; but not otherwise.

The fact of extensive subordinate relations, is proved indisputably, by the recent enquiries and in the printed papers formerly and now submitted to Government. It is idle to deny the existence, and fact, of very serious and numerous mistakes. Surely this has been established by the printed papers and all the facts as now elicited. If not:—

(I.)—Why are so many holdings voluntarily thrown up.

(II.)—Or so many admissions of subordinate relations, voluntarily agreed to, cases called "*ahunsar*."

(III.)—Or so many "*Kumeens*" cases who admit their tenure is conditional.

(IV.)—Or so many agreements for leases, entered into by the parties, themselves, as in Lahore and Goojranwalla Districts.

(a) E. g. Though there may have been a power of eviction held to belong to proprietary classes such power as a *matter of fact* was seldom exercised without the permission of Sikh Revenue Agents.

(*a.*)—The assertion is contradicted by the following evidence.—

(1)—By replies, information and facts collected in first set of Printed Papers, (Part I.)

(2.—By opinion of some 20 officers of the administration, previously collected.

(3.)—By the results of enquiries made in 10,000 holdings Umritsur Division, and now in 2 more Districts, Lahore and Goojranwalla generally.

(4.)—By the preponderance of opinion in new evidence, viz., the printed set of opinions placed before Lahore Committee of November last.

Note.

Question No. 2. So far as your observation and knowledge extend, have you found it to be that the proprietors, before annexation, refrained as a rule, from evicting tenants who had cultivated for long periods, say 20 years or 2 generations, and were such tenants, as a matter of fact, led to look forward with confidence, to the unmolested enjoyment of their holdings.

The evidence *for* question No. 2 numbers 26 officers. The evidence *against* 45; and if the former are gone into, although it is stated tenants were seldom evicted in Sikh times, many explain the reasons for this, in mutual convenience, in there being no demand for land, in property having no value, and so forth. Still, it is not openly denied by more than 15, out of 71 officers, that proprietors had the power to evict, if land was required for personal use.

(5).—By the singular fact, that, if the parties are confronted, the majority of tenants at once admit that, "of "course the owner had the power and did evict when it suited "his purpose to do so," seldom has it been urged that this could be done only with permission of Sikh Revenue agent.

Thus, because a tenant happened to have cultivated from year to year, for several years, it by no means followed that this continuance of occupancy barred the right of ejection. This is no where established by the evidence obtained by the enquiries.

(*b.*)—Again, as a rule individual proprietors had little or no recognition in Sikh times; for the Kardars or Revenue agents collected from all alike, whether Proprietors or cultivators; gave grants of land to both alike, and so in reality the continuance of cultivation depended more on the Kardars and their agents than proprietors dealing individually or on a mutual relation with their tenants.

(*b*).—I know this objection is frequently urged by our English Officers. The opinion is strongly entertained by former Settlement Officers, even to this day. I myself shared this belief; but recent enquiries, on an extensive scale, have convinced me that the cases here alluded to, in Sikh times, were rare. *They are not the rule.* Tenants here and there have acquired their fields from persons other than proprietors, *e. g.*, by grants, transfers, leases and the like, of waste lands; instances have turned up of the tenure being acquired *during the absence, and quite independent of the action of present recorded proprietors,* or any of his ancestors; but such cases, I can unhesitatingly declare, *are far from numerous.*

In the generality of instances, (as discovered by our enquiries) the tenants frankly admit (1) that the father or

grand-father of recorded proprietors gave them the fields for *purposes of cultivation*; (2) that when this occurred other tenants held before them who had been evicted by the proprietors ; (3) that the land was cultivated when made over; shewing, unmistakeably, the connection between the two classes. The belief is strong, I know, among our officers, of the Kardars' interference : but I can affirm, with confidence, the tenants themselves do not say this, in support of their claims for adverse occupancy. This at once explains how it is so many tenants at once admit the "*ahunsar*" tenure.

(*e. g.*)—Complete subordination when the occupancy arose and their readiness to fall in with that position now.

In Goojranwalla district, I am collecting *facts* to shew, exactly, how many tenants have replied, that their position was thus adverse to the proprietor, for the reason here combated. Their number will, I am sure, be quite insignificant and if so, this position of our opponents is weakened altogether.

However it is not to press the land-owner point of view, that this is written; but to shew, by explanations and reference to stern facts; that opinions are hastily formed and conclusions drawn by our opponents, which are not warranted by results of the recent enquiries and it is high time that some effort should be made to remove such impressions.

What we maintain, then, is this; that the following positions are established by the procedure we are adopting ; and if so, there is no reason for special legislation to restrict the action taken under the Revised Settlements.

I.—We supply an omission of last settlement we confront the parties and make the enquiry which should have been made at last settlement.

II.—We record that which we find to be the existing fact.

(1.)—Either by direct agreement or admission.

(2.)—Or by Settlement award.

III.—This Settlement award procedure is the one only way in which we can appropriately take action under Regulation VII of 1822.

IV.—Therefore our procedure *is* legal.

V.—It is also *just to both parties*; because the objections of both are heard.

VI.—There is really no hardship to any one, as two courses are open, either to appeal summarily, or bring a regular suit; and this course pointed out by our opponents is still allowed to *either* party, not enforced on the proprietors only.

VII.—It is not denied that mistakes have been great and numerous, so the Act proposes to give one way of correcting these by a regular suit, which is costly and harrassing. The procedure we follow effects the same end, only cheaply and quickly, while there *is fair play to both interests*.

E. A. PRINSEP,

Settlement Commissioner.

THE DEBATE ON THE PANJAB TENANCY BILL, IN THE LEGISLATIVE COUNCIL 18TH APRIL, 1868.

Extract from Proceedings of the Council of the Governor-General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67, dated 18th April, 1868.

The Hon'ble SIR RICHARD TEMPLE moved that the Bill to define and amend the law relating to the tenancy of land in the Punjab be referred to a Select Committee with instructions to report in one month. He said it would be in the recollection of the Council that this Bill had some time since been introduced by his friend Mr. Brandreth, and it was much to be regretted that his Hon'ble friend was prevented from finishing the work which he had begun; but before Mr. Brandreth had departed, SIR R. TEMPLE had put down in writing the Hon'ble Member's opinions on each part of the Bill, and therefore the Council would be in full possession of that gentleman's views. In January last, the consideration of the Bill had been postponed pending the receipt of information from the Punjab. That information had now been received, and the papers consisted of a memorandum by His Honour the Lieutenant-Governor of the Punjab, in which various amendments had been proposed and also of certain opinions expressed by Mr. Edward Prinsep. So far, then, the requirements of the Council had been fulfilled.

The Bill as now laid before the Council had three main objects in view. First, the definition of occupancy-right; secondly, the regulation of the enhancement of rent; and, thirdly, the concession of compensation for eviction of tenants and for unexhausted improvements. Under the first head, the definition of the right of occupancy, the Lieutenant-Governor had proposed various elaborations of Mr. Brandreth's definition. Those elaborations had been proposed with all that comprehensive and minute knowledge for which His Honour was so distinguished. But SIR RICHARD TEMPLE rather apprehended that the phraseology was not such as would approve itself to the Hon'ble Mr. Maine and the learned Secretary of the Council. SIR RICHARD TEMPLE had therefore endeavoured to revise the phraseology so as to simplify it; but even then he thought the revised language would undergo still more castigation in the Legislative Department. As regarded the second point, the regulation of the enhancement of rent, the Lieutenant-Governor had proposed various verbal emendations, which, with slight simplifications, SIR RICHARD TEMPLE proposed to accept. But with regard to the third head, the concession of compensation for eviction and for unexhausted improvements, there was one point of considerable importance on which the Lieutenant-Governor laid great stress. It was proposed that the landlord might evict a tenant on payment of compensation, or, in other words, that the tenant might be bought out. That principle was somewhat novel to the practice of the Punjab. But it was equitable in itself, was not without precedent in England, and was now strongly recommended by the Local Government; and he therefore proposed to retain it. On the rest of that portion of the Bill, the phraseology of the Lieutenant-Governor was distinguished by all that local knowledge which SIR RICHARD TEMPLE had just adverted to; but he feared the language would again require revision.

Those were the main objects of the Bill. He was sanguine that, if the Council would agree to the Bill being referred to a Select Committee, there would be found to be no difficulty with regard to principle, and that the points remaining for discussion would be only matters of detail which would be best settled in that manner.

He would beg to add a few words regarding the policy of the Bill. He found that he was quoted in the correspondence by the Lieutenant-Governor (and correctly quoted) as a witness rather against the formal existence, under Native rule, of what was technically called tenant-right in the Punjab. No doubt, when a Settlement Officer in the Punjab, he (SIR RICHARD TEMPLE) had written passages which would appear to have that interpretation. He was not here to unsay what he had once said, although it might appear inconsistent in him to take charge of the Bill which had for its object the recognition of tenant-right. But still he would point out to the Council what he had written formerly on the subject, because the point involved one of the vital principles on which the Bill was founded. It was true he had written as follows :—

"The right of occupancy, apart from proprietary right, was unknown; the Government may partially have recognized it, but the people did not: however long a patch of land may have been occupied, the proprietor would at his pleasure resume it without ceremony, and the cultivator would resign it without demur."

Again he had written—

"The distinction bewteen hereditary and non-hereditary cultivators is not indigenous in this part of the country. It has been introduced by the settlement."

No doubt these passages did militate very much against the existence of occupancy-rights under Native rule in the Punjab; but then there were many passages in the same report which very much qualified that view. For instance, he wrote—

"The cultivator made good the Government claim on his glebe precisely in the same manner as the members of the proprietary on their holdings."

Again—

"In fact the cultivators could not afford the proprietor much, when they had to contribute all they could spare to the State."

Again—

"The cultivator, while he held the position, also bore all the burdens and calamities of malguzar (revenue-payer). He it was who underwent the drain of presents, cesses, and extra collections, and who fed the hungry retainers of the revenue collectors."

Again—

"If the proprietor chose, he might allow the cultivators to engage; nor would he in that case have been held at all responsible for any balance or default that might occur."

Again—

"Sometimes the privilege of engaging would be contended for by the cultivators and the proprietors."

Again—

"In many instances claims, on the one hand, of cultivators who had borne the fiscal burdens, and, on the other hand, of proprietors who had realized some dues, would have to be balanced. The revenue system of our predecessors had often rendered it difficult to distinguish one class of cultivators from the other, and the upper class [of cultivators] from the proprietor."

Now, he submitted that those passages, taken all together, did show that the tenant-right generally, like the right of the landlord, was insecure and uncertain in the midst of universal insecurity and uncertainty, though there were many classes of tenants that had prescriptive titles as good in their way as the titles of the proprietors themselves. In that state of things, what did we do. That was discovered in a further passage of his report, which he would read :—

"We have endeavoured to preserve the cultivators' position, and to improve it to the same extent as that of all other agriculturists."

And again—

They pay to the proprietor more now than formerly. But then they pay much less to the State, and their position is much more definite and permanent than heretofore."

Under those circumstances, we certainly did record a great number of cultivators as occupancy ryots; those proceedings were approved by the Government of the day, and had been in force for fifteen years and more. Considerable rights had grown up in consequence, and it was impossible to ignore the position which had thus arisen, partly out of the state of things under Native rule, and partly out of the proceedings of the British Government. But no doubt we did, in making that record, go a little too far. Perhaps we had thought too much of the rule of twelve years' possession, and too little of the concomitant incidents of the tenure. The number of cultivators who were recorded with occupancy-rights was too great. Mr. Prinsep had very clearly shown that such had been the case. And, inasmuch as that gentleman possessed a really extraordinary knowledge of the rural classes, and had laboured most perseveringly for their welfare, whatever came from him was entitled to much weight. But, in defence of the Settlement Department, it must be urged that we were under special temptation to record occupancy-ryots largely. In those days the competition was for tenants rather than for land; proprietors were only too happy to see us record them as occupancy-ryots. The proprietors expected that thus these ryots would be bound to the land as sharers in what were then considered the severe liabilities of proprietary right. The manner in which a tenant was regarded in those days was given in a passage of his (SIR R. TEMPLE'S) Settlement Report from which he had already quoted :—

" In some villages, where a few steady tenants are the main-stay of the estate it has suited the proprietors to excuses the hereditary tenant altogether from the payment of rent."

Again—

" Money being scarce at present, the proprietor is generally glad to compound with the cutlivator for the discharge of malguzari liabilities, and is content with a nominal malikana."

Now that the competition was coming to be for land rather than for tenants, the landlords might probably have changed their opinions.

Well, it being admitted that there were certain classes who might be recorded with rights of occupancy,—it being further admitted that the record was carried a little too far, and that rectifications was necessary,—the question arose, how should that rectification be made? We say that it should be made by legislation. In the first place, the proceedings of the settlement were of a *quasi*-judicial character. The settlement officers were vested by the Government with powers to that effect, and if Mr. Prinsep was now vested with such powers, so also were those who went before him. Thus there was doubt whether the settlement proceedings could be lawfully rectified without the authority of a law. In the second place, most of these cases would have to be adjudicated by the Courts of Justice, and the Courts would naturally expect something more than executive authority, particularly when the executive orders were conflicting with former executive orders of equal, if not greater, validity. And thus legislative authority was necessary to legalize the proceedings which had been very properly undertaken by Mr. Prinsep up to this time.

Those, then, were briefly the grounds on which he had to ask the Council to agree to the Bill being referred to a Select Committee. He believed it to be a Bill such as would suit the existing state of things, which had arisen partly out of the practice under the Native rule, and partly out of the circumstances of the British administration. By it we rectified what was amiss; by it we reconciled the somewhat conflicting interests of two of the most important classes of the agricultural community. There was not the slightest desire to create what did not exist, nor to benefit the cultivator at the expense of the proprietor; and when we considered the absolute proprietary right that had been given to the proprietors, it was desirable to leave them to improve and benefit their estates unfettered by unnecessary conditions. This Bill would be consistent with that principle, and if passed, it would add one more to the long list of advantages which the Punjab enjoyed

The Hon'ble MR. COCKERELL said there was one question which he should like to ask the Hon'ble Mover, in regard to that portion of the Bill which related to rights of occupancy. As he understood the sections of the Bill as now drawn and Sir Richard Temple's explanation of them, the object of one clause regarding the right of occupancy was to lay down certain rules for the guidance of the settlement officers in dealing with cases now pending, or which may hereafter be brought, before them! and in these rules it was provided that the settlement officer must recognize the rights of occupancy of a tenant holding under certain specified conditions; but he (MR. COCKERELL) found that it was proposed to retain in that section, as embodying one of the said conditions, the clause inserted in Mr. Brandreth's Bill, which declared the right of occupancy to be vested in any tenant whose name appeared in the record of any regular settlement sanctioned by the Lieutenant-Governor prior to the passing of this Act. It would seem, therefore, that, if this Bill should become law, the proceedings of Mr. Prinsep or any other settlement officer, engaged in the revision and correction of the errors of previous settlements, must at once come to a stand-still, inasmuch as he, under the operation of those rules, would have no power to question the validity of the rights of occupancy recorded in the settlement proceedings which took place on the first annexation of the Punjab. If that were the case, and MR. COCKERELL was correct in his apprehension of the effect of the section, he would ask how the provisions of the Bill with regard to the right of occupancy were to be carried out, and how the rules that were to be laid down for the guidance of settlement officers were to be carried into effect.

The Hon'ble MAJOR-GENERAL SIR H. M. DURAND said that, when asking leave to refer this Bill to a Select Committee, the Hon'ble Member who had taken charge of the Bill touched upon the necessity which existed for legislation on the subjects contained in the Bill and made this the basis on which he put it to the Council to allow the Bill to be sent to a Committee. SIR H. DURAND thought the Hon'ble Member was right in endeavouring to establish what had been greatly challenged,—namely, the fact whether any legislative measure were at all needed. It had been questioned by that very able officer, Mr. Prinsep whose words, with the permission of the Council, he would read, though at some length, inasmuch as they put the matter clearly. They were as followed, and were to be found in the letter to Mr. Brandreth of the 28th January, 1868:

"Now, what I wish to come to is this: (I) if we can act legally under Regulation VII. of 1822; (2) if after the awards are given, there are still two doors open, (a) either for tenant to ask for review of order summarily, and appeal on the summary enquiry—the regular procedure of settlement—or (b) he can bring a regular suit under the same Act, which also can be appealed, and, if further dissatisfied, the objector can appeal against both processes, first to Settlement Officer, then to me, afterwards to Financial Commissioner; (3) if custom was not followed before, and is being followed now; (4) if the Pana system is objected to, we are ready to drop it in all cases not voluntarily agreed to; (5) if in this way the entrie of a former settlement record can always be so far respected that either they are proved to be wrong, when they are corrected—

(1) by agreement,
(2) by award,
(3) failing award, by regular suit,

or proved to be right, they are maintained, as in the 4,000 decrees given in contested suits alone, and 11,533 awards before Superintendents who did find the status and upheld them (whether on agreement or otherwise) in the Amritsar Division;—if these five points show we come to the exact conclusion aimed at by the Bill, then why all this legislation, I ask?

These are my chief arguments for *registration*, as better, if systematically followed and under clear, intelligible safeguards, than leaping in the dark, propping up a bad cause, and increasing expense, litigation, and bitter feeling among the two classes by referring every thing outright to the Courts, as you are aiming at in this effort of legislation."

Mr. Prinsep then proceeded to add that, under certain conditions, he was not seriously opposed to legislation. Again he must ask the patience of the Council whilst he read:—

"I think it quite feasible and most desirable to have a Tenant-right Act as well as Tenant-rent Act, only what I object to are the *principles of the Bill, in Part II. particularly*.

If you will throw out the term of years—' 12 years prior to 1st day of April, 1869—in section 6, and ' within the thirty years immediately before the institution of a suit', and let the condition (3) under the section read thus—' That relating to the right of occupancy,' &c; also take away the *explanation clause*, and put in ' custom as known in this and adjacent villages,' or ' under similar incidents of tenure, instead of the ambigu-

ous and *dark* phrase 'holding under similar circumstances,' which may mean anything, then I can come to some understanding with you. I will even agree to this. After framing exception 3 as above, let it be followed by a proviso thus :—

"*Provided* that, if no such custom or analogy be proved and it is discovered that *adverse* possession has been held absolutely for thirty years (or even reduce it to twelve years), the entry shall be upheld. This would allow full scope for decisions being given 'according to *the custom of the country*,' which I am happy to see in your letter is what the Bill now aims at."

Now, in consequence of the action taken by this Council on the 17th January last, they had in their hands a most valuable Minute from the Lieutenant-Governor of the Punjab. It bore every mark of careful thought, and of earnest deliberation. It was in every respect a most important State paper, and in seeking to arrive at a decision on the expediency of any legislation on this delicate and difficult subject, he (SIR H. DURAND) had read it with the attention it merited. Although it nowhere stated in very absolute terms that legislation was necessary—at least he had failed to find any positive assertion of the kind—yet he thought that its general tenor was in favour of special legislation. It was a very remarkable Minute, and, coming from such a quarter, it had with him great weight; and on this particular point the opinion of Sir D. Macleod might be inferred, both from its general scope, and also from the particular paragraph which, with the sanction of the Council, he would read :—

While the replies, especially to the 8th of the questions put by the Punjab Government, show how urgently legislation is required.

"To those who consider that the existing state of things is sufficiently satisfactory for practical purposes, and doubt, therefore, whether further legislation is now required, I would earnestly suggest a careful perusal of the replies, at least to the 8th of the questions put by the Punjab Government, which, for facility of reference, I have transcribed in the margin. For many years past, the conviction which has urged Mr. Prinsep so persistently and warmly to urge the necessity for a change—the conviction, *viz.*, that the existing state of things was rapidly undermining all good feeling between the most important classes of the agricultural population—has strongly impressed itself on those of our officers who are most careful to enquire into the feelings of those about them; and as I deemed it most essential that a distinct avowal of the impressions entertained on the point should be elicited, I had the question put."

"8. State how the operation of our system thus far has affected the relations between tenants and proprietors, especially as regards the friendly or unfriendly feeling existing between them; giving by way of illustration any facts that may have come to your notice bearing on the point. And if any unfriendliness have shown itself, to what causes is this mainly attributable?"

Passing over intervening paragraphs of great interest, but not immediately bearing on the point to which he referred, he would read the 22nd paragraph of Sir D. Macleod's Minute :

Or, however, the constraining influence of the Sikh rulers may have prevented landlords from asserting what they considered to be their rights.

"It is no doubt true that, except where the people were too strong to be trifled with, tenants were under Sikh rule, retained in their holdings, or new ones introduced by the officials of the day in opposition to the wishes of the proprietor; but I cannot think that this affords sufficient grounds for our Legislature to stereotype such a state of things, or to accept as an established principle that which has been the result of violence and wrong, however tenderly we may be bound to deal with the state of individuals thus established, however wrongfully. When borne down by an over-ruling power, and in times of anarchy, populations will resignedly endure much which they will indignantly resist when enforced by the rigour of settled laws; and in this matter I am myself most fully satisfied that the right of the proprietor to dispose of his lands, however it may have remained in abeyance, has never ceased to be acknowledged, and will never be contentedly surrendered. The vigorous Jats of the Manjha and Malwa, the Pathans of the frontier, and the hard races of the salt range and adjacent tracts, have not, I believe, as a body, recognized the fact that they are really to be precluded from the use of their lands should they require them; and on numerous occasions most bitter protests have been made to me on the subject, where an individual has been made to feel, by the action of our Courts, that such is indeed the law. As time progresses, the value of land will increase, and the requirements of its owners will multiply, when this acerbity of feeling cannot but increase likewise; and it is difficult to foresee what will be the result if a corrective be not now applied."

From these particular paragraphs, and from the general tone of this Minute, it seemed fair to conclude that the person in the best position to form a judgment on the question was in favor of some legislation. This, with the admission before noted of Mr. Prinsep and other Punjab officers, disposed him to accept it as established that some legislation might be expedient.

The query then came—and it was one which the Hon'ble Member had himself dilated upon—what should be the aim and character of that legislation? This was a question of the very gravest moment, for it involved the welfare and the contentment of that important frontier province, the Punjab,—not a matter to be trifled with. At the same time, it was one of no ordinary difficulty; and one result of the line pursued by this Council on the 17th January last was, that they were now cognizant of the circumstance that, in the previous November, the Lieutenant-Governor of the Punjab deemed the matter of such serious importance that he assembled at Lahore a Commission, and a Commission constituted of very able men, to consider and report on the terms in which a Bill should be drafted to meet the requirements of the state of affairs. Of the inherent difficulty of the duty laid on the Committee they were made aware by the fact, which the Lieutenant-Governor himself was careful to note, that most of its members recorded dissents;—some on one point, some on more, but, as the Lieutenant-Governor justly, though concisely, gave it to be understood, in one form or other the majority were dissentients. This demonstrated the thorny nature of the question, and that, in having recourse to the remedial and corrective measures which the Lieutenant-Governor advocated, it behoved this Council to be very careful that it did not complicate existing difficulties by the creation of new rights. They had the assurance of Sir R. Temple that there was no intention of creating new rights, and that all that was purposed was to define existing rights and to conserve them. This might be so, but the provisions of the Bill on this head would demand careful scrutiny, for it was imperative on this Council that any Bill that it might pass should not be justly exposed to the objection which a very able officer of the Punjab Commission, Colonel McNeile, raised to Mr. Brandreth's draft Bill, and which he asked liberty to quote:—

"Further interference than this, in the subjects treated of in the Bill, I look upon with some alarm. These are not matters that affect the people exceptionally, as do those ordinarily dealt with by the Legislature: they stand less apart from daily life than even the close-touching questions of taxation; they relate to habits and customs as ingrained as religious tenets; and the enactments of this Bill if it become law, will disorganize rural society throughout the province, and breed feuds and dissentions in every village. The Courts will be flooded with suits under Parts II., IV., V., and VI., many of the provisions of which can be called nothing less than revolutionary; and the defeated litigant will carry home with him a grudge which, being about land will live in his family for ever."

Whatever was finally resolved must be clear of any such results as were here foreshadowed.

He could have wished himself that they were in possession of a greater amount of trustworthy facts. He could have desired a larger corpus of the recorded customs and usages of the various provinces of the Punjab, for they were different in the several main divisions of that frontier province. But they were assured, in the 14th paragraph of the Lieutenant-Governor's Minute, that he did not think it was possible under existing circumstances, or practically necessary, to collect more trustworthy information than had now been supplied to guide the Legislature in determining the general course which legislation should follow. Considering the valuable facts which, under the sanction and with the approval of the Lieutenant-Governor, Mr. Prinsep had arrayed, he supposed that they must accept this conclusion as warranting the reference of the Bill to a Committee without further delay for more complete and general information. But he was strongly of opinion that there must be no precipitancy in acting on this view, and that, in the course of the review of the information available, they might require more that was special on the customs and usages of various parts of the Punjab, and that they must be exceedingly solictious that any innovation admitted into the Bill should be such as carried the cordial assent of the people affected by them.

The next point moved by Sir R. Temple was that the Bill answered the conditions he had prescribed as the radical considerations which had ruled in the framing of the Bill.

He gave the Hon'ble Member credit for having endeavoured to reconcile and harmonize the difference between Sir D. Mcleod's and Mr. Brandreth's opinion. But the discrepancies were on some points material, and his success had necessarily been partial. The Bill, in its present form, was far from symmetrical, and would require careful elaboration to make it more so. It would require to be taken section by section, and to have its provisions minutely tested and examined. He should have taken up some of the sections to prove his meaning, and to show how open to discussion were some of the matters involved; but it would have

driven him to occupy the time of the Council to an inordinate degree, and the sections would be better analyzed *seriatim* in Committee, where they must undergo a searching investigation before they became law; for he was convinced that, without his further consuming the time of the Council in endeavouring to show the necessity for this patient and searching consideration, the Council quite understood that, as far as he was concerned in agreeing to the reference of the Bill to a Select Committee, he did so with the feeling that there would be no precipitancy in pressing on the Bill, and every opportunity given for the most deliberate expression of opinion after its provisions were made known. He would consequently not touch the details of the Bill, but agree to its being entrusted to a Select Committee.

The Hon'ble MR. TAYLOR said that, as he was one of those who, on a former occasion, had doubted whether a real necessity was shown for legislation in this matter, he thought it right to state that he was now satisfied, from a perusal of the voluminous papers which had come up from the Punjab, and especially of the Minutes of His Honour the Lieutenant-Governor, passages of which had been quoted by Sir H. Durand, that a speedy, authoritative settlement of this vexed question of Punjab Tenant Right was highly desirable. He was therefore no longer opposed to the Bill being sent to Committee, whose labours, he trusted, would result in a measure which would have the effect of harmonizing the conflicting opinions of the various experienced authorities of the Punjab, and be of lasting benefit to the country.

The Hon'ble SIR RICHARD TEMPLE said he was not sure whether he quite correctly understood the Hon'ble Mr. Cockerell's question, but he apprehended that the point on which his Hon'ble friend required explanation was this. Supposing that the Bill virtually gave legal force—authoritative legislative effect—to the proceedings of former settlements, how could Mr. Prinsep now, or hereafter, call those records into question; in other words, how could any errors in the former settlement records be now rectified? Assuming that, or something like that, to be the point on which the Hon'ble Mr. Cockerell required explanation, his (SIR R. TEMPLE's) answer was this. In the Bill, they found the following among the definitions of occupancy ryots:—

"Every tenant whose name appears in the records of a regular settlement sanctioned by the Local Government prior to the passing of this Act."

But then the draft Bill proceeded thus:

"The landowner may rebut the said presumption by showing—

"(1)—That the entry in the said records was made in violation of the rules laid down by the settlement officer, as set forth in the official reports of records of the settlement;

"(2)—Or that the tenant had voluntarily admitted before any settlement officer that he is a ttenant-at-will."

Therefore he submitted that the Bill did provide especially for the revision of any errors that might have crept into the settlement record.

Perhaps the only other point that he need advert to was the remarks of Mr. E. Prinsep (quoted by the Hon'ble Sir H. Durand) that great dissatisfaction would be created amongst proprietors if they could not occasionally remove tenants when they required the land for themselves. Now, this Bill did very specifically provide for that, by allowing proprietors to buy tenants out,—that is, to remove them on payment of compensation; and in order to secure that such compensation should be fully awarded, it was further provided that the Courts should carefully and specifically assess the same. For the details of the manner in which compensation should be awarded in such cases and for unenhausted improvements, he proposed to adopt the phraseology of the Bill introduced for Oudh by the Hon'ble Mr. Strachey, which he (SIR R. TEMPLE) believed would be found a good legislative model.

As to the danger which seemed to be apprehended by Colonel McNeile (quoted by the Hon'ble Sir H. Durand), he (SIR R. TEMPLE) hoped that, under the law as it would be amended in Committee, no such fear need be entertained. To those members of the Council who has come from distant parts of India, the landed proprietors and the occupancy-ryots of the Punjab might appear little more than vague abstractions. But to him and others, who had worked and moved amongst these people and had pitched their tents for years in the midst of them these classes were living realities. He thought he could venture to assure the Council, that if this Bill as amended should be passed, the evils so vividly pourtrayed by Colonel McNeile would be averted.

The Motion was put and agreed to.

MINUTE

BY THE

Chief Court,

ON THE

TENANCY BILL,

OF THE

PUNJAB,

1868.

MINUTE ON THE PROPOSED BILL TO DEFINE AND AMEND THE LAW RELATING TO THE TENANCY OF LAND IN THE PUNJAB.

The Government of India had expressed doubts as to the validity of the recent revision of Settlements.

1. In the letter of the Government of India, Home Department, No. 256, dated 17th July 1868, to the Secretary to Government Punjab, it is stated that irrespective of policy or expediency there exists grave legal doubt as to the validity of the recent revision of Settlements, so far as such revision may affect rights declared at the regular settlement of the Punjab. "In the first place," it is stated in that letter, "there have "been certain decisions passed by the Chief Court of the Punjab, the conse- "quence of which would appear to be likely to invalidate large classes of adjudi- "cations made by the officers engaged in revising the settlements; such adju- "dications affecting many thousand of cases even in a single District. In the "second place, the legality or otherwise of these revisions is held to depend on the "fact as to whether Regulation VII of 1822 is, or is not, in force in the Punjab. "Now in a very full and detailed list of Regulations in force in the Punjab— "which list was prepared by the Chief Court of the Punjab—the Regulation "VII of 1822 does not appear. If then this Regulation be not in force in the "Punjab it is to be apprehended that the revision now going on, so far as it "concerns rights in land, may be held by Courts of Law to be without "authority."

And to give an opinion on the legality of these proceedings is what the Judges understand is desired of them.

2. This part of the reference of Government, the Judges of the Chie Court deem to call for immediate information from them as to the precise view they have adopted in regard to the recent Settlement proceedings, and their opinion upon their legality. To explain this matter is more immediately within their functions than to give an opinion as to the general scope of the Bill, and the Judges understand that they are referred to expressly on this point. They accordingly divide the observations which they have to offer into two distinct heads. The first relates to the operation of Regulation VII of 1822, the nature of the adjudications made between landlord and tenant by the officers engaged in revising the Settlements in question, and the effect which should be given to the revised entries by Courts of Law. The second head relates to general observations which the Judges desire to make on the proposed Bill. In reference to the first of these heads it is necessary to discuss the orders of Government relating to the powers exercised by Settlement and Revenue Officers at some length.

Reg. VII of 1822 is in force in the Punjab so far as its provisions have not been superseded by later circulars or orders.

3. The despatch of the Secretary to the Government of India, Foreign Department, No. 418, dated 31st March 1849, to the President and Members of the Board of Administration, declared that, the Punjab Courts were to endeavour to conform as nearly as the circumstances of the case would permit to the spirit of the Regulations, and on the Revenue side they were to take as their guide the four short printed

Circulars of the Suddur Board of Revenue, North Western Provinces, and the pamphlets published under the orders of the Lieutenant Governor. Under this authority the provisions of Regulation VII of 1822 are in force in the Punjab, in so far as they are not inconsistent with extended jurisdiction vested in Settlement Officers for the trial and decision of regular suits regarding land (elsewhere cognizable by Civil Courts only), or have not been superseded by the rules laid down for the exercise of these extended powers by the various Circulars of the Board of Administration, and of the Financial and Judicial Commissioners.

After annexation the Civil Courts were crowded with revenue suits.

4. Shortly after annexation, the several District Courts were thronged with suitors claiming fractional shares of villages, or specific lands in villages, of which they had been deprived at the commencement of and during the Sikh Rule, and it became a question for consideration how to deal with these claims, and to provide for their decision agreeably to the customs of the village communities, and the wishes of the people, without encouraging frivolous petitions, or weakening the just titles of the occupiers and owners of the soil.

The Board of Administration thought that Settlement Courts could best decide them. Para. 6, Circular 122 of 1849.

5. The Board of Administration were of opinion, that disputes regarding rights in the soil could only be satisfactorily disposed of in a Settlement Court, and they considered that "until the "lands of a village have been measured, and its constitution "ascertained, it is impossible to limit and determine the "subject in dispute, and arrive at or execute a decision "without trenching on the rights of others not parties to the suit."

And circumscribed the revenue jurisdiction of District Officers by certain rules.

6. Accordingly the Board in their Circular No. 122 of 1849, laid down the following rules for the guidance of Commissioners and Deputy Commissioners, in all cases regarding rights in the soil which might come before them :—

"I. No claim to any fractional share of a village or to any specific "lands shall be investigated in a Civil Court, unless the plaintiff file an attested "copy of a decision of a Settlement Officer in the case.

"II. No claim as above shall be admitted in any Revenue Court other "than that of a Settlement Officer, if the party suing has been more than one "year out of possession.

"III. If the petitioner has been dispossessed within the year, his claim "as above may be heard in any Revenue Court. But the Officer presiding "shall give or confirm possession, as it stood at the beginning of the year, "without entering into the legal rights of either party.

"IV. Where possession as above cannot be ascertained, the Officer presiding in any Revenue Court shall investigate the case on its legal merits, "and decide according to equity and good sense.

"V. No claim as above shall be heard as a question of possession or "right in any Criminal Court."

7. Although the evident intention of this Circular was that Settlement Courts should have the final determination of all claims relating to rights in the soil, the Settlement Officer being, in the opinion of the Board the only Officer in a position to dispose of such claims satisfactorily in a new country, still it would appear form Rule I that the Civil Courts were vested with powers in certain cases to investigate claims form land, which had already been decided by a Settlement Officer. From the terms of the Circular it is difficult to say to what extent and with what object this power was left with the Civil Courts; and it was shortly afterwards, on the representation of the Board of Administration, withdrawn by an order of the Governor General, conveyed in Sir Henry Elliot's letter No. 1602, dated 1st September 1849, which declared that, "the decisions of the Settlement officers under their authority should "be considered final (subject to the usual Revenue appeal) in all cases decided "on their merits." The letter also stated that "under this determination it "will be necessary to enjoin that the revenue officers should be more careful "to go into the merits of a case than they would be, if they knew it was open "to appeal to themselves in the Civil Court, when they might have the oppor- "tunity of revising their own summary decision."

Some power, in cases relating to rights in land was left them, but this was shortly taken away.

8. The principles of this despatch were also subsequently embodied in the Punjab Civil Code and the Circulars of the Financial Commissioner. In defining the jurisdiction of the Civil Courts, para. 4, Section I, Punjab Civil Code, Part I, declares that a suit may not be brought "for any matter that may have "been decided by or may be pending before an authority or "tribunal competent to try it. This clause will apply to decisions passed at a "regular settlement, and to all cases relative to landed property in a district "where such settlement may be in progress." Financial Commissioner's Book Circular 43 of 1858, when prescribing rules for the correction of formal entries in Settlement Records, also declared that in cases in which a judicial investigation has been held by an officer of the Settlement Department and decision formally recorded, such decision is on no account to be interfered with, save on appeal to the proper authorities in the authorized mode. And in continuation Book Circular XXXIII of 1860 was issued to define more particularly the circumstances under which, the period within which, and the mode in which formal entries in the Settlement Record may be modified. This Circular having received the sanction of the Local Government has now the force of law under the Indian Councils Act.

The Punjab Civil Code and the Circulars of the Financial Commissioner are based on the same principle.

9. At the time that Circular No. 122 of 1849 and Government despatch referred to above were issued, it was supposed that a Regular settlement would be introduced generally throughout the Punjab at an early period. In this expectation however the Board were disappointed, and as great inconvenience had been experienced from suits for the recovery of rights and interests connected with the soil being inadmissible in the local Courts it was found necessary to relax to some extent the rules laid down in Circular No. 122 of 1849. Accordingly Circular No. 2 of 1852 was issued, directing Deputy Commissioners to take up and dispose of any suits for the recovery of rights and interests in the soil "in which a final order could be clearly given without "prejudice to the general interests of the village community and in which a "hardship and injustice would evidently be entailed by delay. But cases which

Circular 2 of 1852 gave District Officers again the power to dispose of suits for land, under ordinary circumstances.

"would admit of delay, or were of so peculiar and intricate a nature as only to "admit of being satisfactorily dealt with by a Settlement Officer were, after "preliminary investigation, to be set aside until his arrival." Appeals from the orders were to lie in the usual course to the Commissioner, who was empowered also to revise any order which was not consonant to reason and justice, but no appeals from such decision were open to revision by the Settlement Officer.

Which by a later Circular were directed to be heard on the Revenue side only.

10. Doubts having been afterwards expressed as to whether the Deputy Commissioner, in the exercise of the powers vested in him by the above mentioned Circular, heard suits regarding land on the Civil or Revenue side of his Court, owing to a misapprehension of the term "local Courts" as used in that Circular, the matter was set at rest by the issue of Judicial Commissioner's Circular No. 95 of 1855, which declared, with the sanction of the Chief Commissioner, that in future all suits for landed property should be instituted and disposed of in the Revenue Department, to which the records of all cases decided or pending in the Civil Courts were to be transferred.

Financial Commissioner's Circular No. 15 of 1855 did not affect the general system.

11. The general system thus established was not affected by Financial Commissioner's Circular No. 15 of 1856, which had only the effect of introducing an exception in regard to all questions of inheritance where rights to personal property and houses were in dispute in the same suit, and at the same time, as rights in land. In these cases the jurisdiction of the Civil Courts was maintained, but only to this extent that the declaration of right in the Revenue Courts was preceded by a judgment in the Civil Court.

Which gave Settlement Officers sole jurisdiction in Districts where the Settlement was in progress and Deputy Commissioners similar powers where it was not.

12. Thus it appears that the Orders and Circulars above quoted had the effect of conferring exclusive jurisdiction on Settlement Officers to try and decide, with the full powers of a Civil Court, all suits regarding land in Districts under Settlement, and of investing Deputy Commissioners on the Revenue side of their Courts with similar powers in Districts in which no settlement of land revenue was in progress, when such powers could be exercised without prejudice to the general interests of the village community and injustice would evidently be entailed by delay.

This system remained in force till 1865.

13. This practice of trying all suits affecting rights in land and the produce of land in the Settlement and Ordinary Revenue Courts, and of allowing a final appeal to the Financial Commissioner, instead of to the Judicial Commissioner, continued in force until 1865. In that year Act XIX of 1865 (*to define the jurisdiction of the Courts of Judicature of the Punjab*) was passed, which had the effect of restoring the jurisdiction of the Civil Courts in suits for land, or the rent, revenue or produce of land. At the same time a power was granted to the Local Government to invest all Revenue Officers with the powers of a Civil Court to try all such suits in any District in which a settlement of land revenue was in progress; at the close of which all such cases were to revert to the ordinary urisdiction of the Civil Courts.

14. This provision had simply the effect of maintaining the jurisdiction of the Settlement Courts intact, without conferring upon them any additional or other powers, besides those which they had exercised since the annexation of the Province, under the orders of Government and the Board of Administration. These powers were altogether different in their nature from, and much more extensive than, those conferred on Settlement Officers in the North Western Provinces under Regulation VII of 1822. Under that Regulation, the Settlement Officer had only jurisdiction to make summary awards, based on possession, which could afterwards be re-opened by a regular suit in the Civil Courts. In the Punjab, the object and intention throughout was to make the Settlement Officer, instead of the Civil Court, the ultimate arbiter in suits regarding land arising in the course of Settlement operations.

When Act XIX of 1865 was passed.

15. But Settlement Officers besides possessing the power of making judicial awards in contested suits under Sections 11, 12, 14, to 20 of Regulation VII of 1822, were also authorized and required by that Regulation to ascertain, settle, and record the rights, interests, privileges and properties of all persons and classes owing, occupying, managing, or cultivating the land; and to correct the errors and omissions in the record of former Settlements.

The powers of Settlement Officers in the Punjab.

16. This being general state of the Law in regard to the powers to be exercised by Settlement Officers it now becomes necessary to examine closely the course adopted in the settlement operations referred to in the letter of the Government of India.

What procedure was followed in the present Settlement?

17. A full account of Mr. Prinsep's mode of operation has been given in his letter, No. 595, dated 16th September 1864, to the address of the Commissioners of Umritsur and Jullundur. He thus describes his mode of procedure :—

Mr. Prinsep's modus operandi.

"Whenever the parties interested cannot agree among themselves as "to the future status and terms of tenancy, the following chief issues are "decided upon award of village punchayet, arranged so that the committee "of five shall represent two members chosen from the landlords, and two "from the recorded hereditary tenant interest.

"I. Power of landlord to evict.

"II. Nature and terms of future tenancy.

"III. Rent or rate of rent to be paid.

"The enquiry is not carried on in any isolated way, but in one sitting. "The whole village being present for the attestation of the records, opportu-"nity is taken to adjust these relations. A statement is prepared for each "village, landlord and tenant, confronted in open Court before the com-"munity and their representatives. Where they come to terms the relations "fixed upon are recorded. Where they refer to the punchayet, the award of "the latter is entered. There is scarcely any interference on the part of "the Judicial officers of the Department, and no arbitrary rules are laid "down. The local customs are recognized, reduced to record and the ver-"dict is tested by reference thereto.

"The punchayets are not partial juries, and no one has it in his power "to make arrangements with them for a partial decision, as it is strict rule "to select the members at random from the crowd at the time (not before) "of the actual sitting for enquiry into their status, and the enquiry being "in open Court before the whole village, it may be allowed that certain "guarantees are secured against wrongful awards"

The recent revisions have no more legal force than the formal entries which they supplant. Mr. Prinsep had, however, full warrant of law for his proceedings.

18. Now it cannot be doubted, as above, that Mr. Prinsep had full warrant of law for correcting errors and omissions in the records of the previous settlements, but the questien has arisen as to the legal force and effect of his proceedings when taken and recorded. And upon this the opinion of the Chief Court is that the recent revisions of Settlement records, however deserving of weight as a matter of evidence, have not any more legal force and do not operate further to bar a regular suit, than the formal entries, which they supplant, and which could be contested in a suit at any time within 12 years after the origin of the cause of action. The summary character of the procedure, differing as it does from that laid down in Sections 19, 23, 26, 27 &c., of Regulation VII. of 1822, and the corresponding procedure in Civil Courts on the summary side at present; its commencement without any formal plaint: as well as the intention of the Orders and Circulars on the subject, lead to the same conclusion. In fact the Chief Court considers that these revised entries are, in the language of the late Mr. Roberts, nothing more than "a superior description of registration." They are not of the nature of a judicial award in a contested suit within the meaning of sections 11,12. and 14 to 20 of Regulation VII of 1822, and Act XIII of 1848 (even supposing this Act to be in force in the Punjab), or clause 6 section 1 of Act XIV of 1859 would not apply to them.

Mr. Prinsep's proceedings, if judicial proceedings, must be considered final, unless appealed.

19. The above *resumé* of the successive orders of Government relating to suits for land will have clearly established, that if Mr. Prinsep's proceedings are to be held to be judicial decisions they must be considered as decisions under the power vested in the Settlement Officers by the Executive Government and final, if not appealed, and not liable to be re-opened by another suit in either the Revenue or Civil Courts—a result which, considering the mode in which the enquiry has been conducted, could not for a moment be deemed to be intended.

The opinions of Revenue officials regarding them.

20. Reference having been made above to the opinion of the late Mr. Roberts, it may be well here to state that opinion at greater length, as well as that of Colonel Lake, both of which opinions seem to support the view taken by the Court.

Mr. Robert did not consider the procedure sufficient in 1865.

21. In forwarding the Report of the Committee convened in 1865, Mr. Roberts, thus writes in his letter, No. 1179, dated 5th May 1865:—

"I do not consider that the procedure heretofore adopted by Mr. "Prinsep, of a punchayet for a whole village is sufficient. In each case "either party should have the option of challenging the assessors. I can-"not also think that Mr. Prinseps' Code, purporting to define all possible

"relations between landlord and tenant, is sufficient to embrace the great "variety of interests which prevail in the Amritsur Division, as elsewhere. "The features are so varied, and often so minute that it would be impossi-"ble without the risk of great prejudice, to lay down general rules or enun-"ciate abstract principles."

And in his later minute, 1868, maintained the same opinion.

22. And in his Minute on tenant Right, dated the 6th March, 1868, Mr. Roberts stated that he saw no reason to alter this opinion. He further recorded that he did not think that the 25,211 cases decided in accordance with the verdict of assessors could be considered either complete awards or decisions on their merit. "There was no doubt a confronting of parties," Mr. Roberts wrote, "their statements were recorded in each case generally in the "handwriting of the presiding Officer, and the opinion of the assessors were obtained, and the decision given with the utmost publicity. Still "I do not think that the proceedings were so full and complete as intended "by section 14 of Regulation VII of 1822, or by Sections 5 to 8 of Regula-"tion IV of 1833, (see para: 13 of *Directions for Settlement Officers*); or "by the correspondence of 1849, which would give finality to the decisions "of Settlement Officers on the merits. And I would not consider them any "thing more than a superior description of registration, unless it be declared "in any Act now to be passed that they are awards in the sense of Regula-"tion VII of 1822, and may be contested by a regular suit within three "years from the passing of any such Act."

Colonel Lake, in the same way thought the procedure open to objections, although the best practicable.

23. Again Colonel Lake in his Memorandum on the status of cultivators in the Umritsur District, enclosed in a letter to the Government of Punjab, No. 137, dated 8th March 1865, thus writes:—"Mr. Prinsep's enquiries as far as they had gone "by the end of November 1864, into the holding of 10,070 "persons recorded as hereditary tenants at the last Settlement "in seven pergunnahs of the Goordaspoor and Amritsur Districts, showed that "only 2,086 were entitled to that status, and although the great majority of the "others it is proposed to protect by leases of shorter or longer periods, the "fact still remains that a very great majority of those who were recorded here-"ditary tenants at the last Settlement, are considered to have no right of "occupancy at all.

"That very great errors were made on this point at the last Settle-"ment I have no doubt. It was chiefly left to the Putwaries to determine "who were hereditary tenants and who were tenants at will, the people "themselves did not understand the terms, the proprietors were not so well "off as they are now, and were glad to get tenants who would engage to "meet the Government demand on the lands cultivated.

"It is equally certain that the procedure introduced by Mr. Prinsep, "for ascertaining the tenure of each tenant is far superior to that adopted "at the last Settlement, and is the best that could possibly be devised under "the circumstances. He appoints assessors, selecting an equal number "from land-lords and tenants from among those who happen to be present "at the time, and these assessors give in their award regarding the tenure "of every tenant in the estate. The procedure is not free from objections, "for instead of enquiry being confined to the status of those who the

"proprietors urge, were wrongly recorded at the last Settlement, the tenure of "every tenant is brought under review. Assessors too are apt to be influenced "by the social position of the parties whose rights they are called upon "to adjudicate: thus if the proprietor was an influential chowdree and the "cultivator a sweeper, I would always predicate at the hand of the asses- "sors a verdict in favour of the proprietor."

The legal effect of the revisions of Settlement Records depends upon the modifications which have been made of Reg. VII of 1822.

24. From what has been stated above, it will appear that the question does not really present itself to the Judges of the Chief Court in the same way in which it has been put in para. 5 of the letter of the Government of the India. The "legality or otherwise," to use the term employed by Government, of these revisions of Settlement Records certainly depends on the question whether Regulation VII of 1822 has not had force, and is not now in force in the Punjab,—a question which must be answered in the affirmative. But the legal effect of these revisions of Settlement Records is the matter on which the practical difficulty arises, and is the point on which a diversity of opinion is understood to exist. This the Court deems to depend upon the question whether Section 11, 12, 14 to 20 of Rgulation VII of 1822 (relating to the adjudication of possessory titles by Settlement Officers) have not been modified by the orders of Government to such an extent, that adjudications of Settlement Officers in that Province have not a different force and effect from that which they would have had, if the provisions of that Regulation had remained without any qualification.

The legality of the operations is not impugned, merely their effect as records.

25. The legality of the operations is not impugned. Nor is their general utility questioned; but the effect which they are to receive as records, whether they are or are not to be treated as judicial awards in contested suits to which Sections 11, 12, and 14 to 20 of Regulation VII of 1822 give special force and validity, is the point on which the Court believes misapprehension to exist. Upon this point, for the reason above given, the Judges are of opinion that the entries in the Settlement Records have not the force of awards in contested suits under Regulation VII, 1822, and are nothing more than revised records affording evidence, but not conclusive proof, of the title set forth.

The orders passed on the recent revisions.

26. The orders passed on these recent revisions of Settlement Records may be classified under two heads:—

1*st*. Those in which the order purports to be by consent of both parties.

2*nd*. Those in which the Settlement Officer has affected to decide the status of the parties, independently of their consent, with the aid of assessors.

The decisions of the Chief Court.

27. This seems the appropriate place to notice the decisions of the Chief Court, referred to in the letter of the Government of India as likely to invalidate large classes of adjudications made by officers engaged in revising settlements. These cases were of the second of the above classes. The assessors appointed were not arbitrators, and the adjudications of the Settlement Officer for the reasons above given, were not awards in contested cases under Sections 11, 12, 14 to 20 of Regulation VII of 1822.

28. The Chief Court regarded the orders of the Settlement Officers as illegally conferring and recording a measure of right which was not recognized by the general law and custom of the Punjab, but consisted of a certain estate made up of an arbitary term of years fixed by the Settlement Officer without authority of law, and apparently for the purpose of reconciling the tenant to the deprivation of an interest which he had previously claimed, and had previously been recorded as possessing: in other words affecting to create a temporary tenure hitherto unknown. The course adopted by the Settlement Officer in passing these orders and giving protection for arbitrary terms of years is not only unwarranted by law, but it is open to this obvious objection, that it encourages the tenant to submit for the time being, instead of at once bringing the question of his status to a final decision of a competent tribunal. Without having the effect of quieting disputes, it would only defer further contest until the tenant's occupation was physically interfered with.

These denounced as illegal a temporary tenure, unauthorized by law or custom, and created by the Settlement officers.

29. The Settlement officers in the majority of cases have given protection for three five, or seven years, or for longer periods, and they appear to have understood that the law of limitation would, in the absence of a regular suit preferred within three years, confer finality upon their decisions. And it is unnecessary for the Court to point out that, in regard to the temptation upon the cultivating class to put off the evil day, the course adopted (besides being a misapprehension of the law) was not calculated to promote cautious decisions upon the real merits of the cases.

Which would have had an injurious effect, both on the people and on the character of the decisions.

30. It is true that to avoid the above result the Settlement Commissioner, as explained in his No. 250, undated, to the Financial Commissioner, issued an order to his subordinates that each tenant holder whose status had been altered should receive an extract from the Khuteonee relating to his holding with a note to the following effect:—"This is an authenticated copy of the recorded occupancy, and terms of occupancy as attested at revised Settlement. If you "have objections to urge, or consider your interests in any way over- "looked, you will be heard again, if you bring a regular suit within a period of "one year from this date." The period of limitation thus fixed was quite arbitrary, and was not warranted by law; and whether it would have had the effect anticipated of inducing parties to bring regular suits, so long as their occupancy was not molested by some overt act, such as dispossession or enhancement of rent, is much to be doubted.

The period of limitation fixed was also quite arbitrary and illegal.

31. It thus appears that although the legality of the process of revision, cannot be questioned, the Settlement Officers have in some cases conferred a quantity of estate unauthorized by law or the custom of the country. Had the Settlement Officers confined themslves to recording whether a cultivator was hereditary or non-hereditary, or holding on any other tenure known in the Punjab, the simple fact for determination would have been the correctness of the entry, but when the revision goes so far as to create a new tenure altogether, the Settlement Officers transcend their powers, and their orders on that account alone are invalid.

The Settlement officers in creating a new tenure exceed their powers.

Orders made by consent of parties cannot be considered as conclusive, but are liable to be rebutted.

32. With reference to the other classes, viz; those in which the order purports to be made by consent of both parties, assuming that such order has been passed by consent it becomes evidence of an agreement. To declare, however, that all entries in the record of a Settlement Officer in respect of such matters as rights of occupancy, rent, ejectment, and compensation for improvements, shall, when attested by the proper officer, be deemed to be agreements between land-lord and tenant is to alter the law as it at present stands. Such entries are presumptive evidence, according to the present law, of an agreement to that effect, but they are not conclusive, and are liable to be rebutted by evidence of mistake, accident, or fraud; or a different state of things existing in fact. The degree of validity and their force in evidence are fully discussed in a recent Full Bench Decision of the High Court, North Western Provinces, in the case noted in the margin*, which though it refers to the provisions of the Wajib-ool-urz equally applies to any entries in Settlement Records purporting to be made by consent.

* Chowdree Benee Lal —Versus Rajah Goorshai, No. 162, dated 29th July 1867.

Nor would the entry of the recording officer be absolutely reliable.

33. The proper officer to record or attest these agreements of entries in the Punjab, the Court believes, would ordinarily be the Superintendent of Settlement, whose grade corresponds with that of the Tehseeldar, and the Court would deprecate implicit reliance being placed on these entries as binding on the parties whose rights they purport to record, merely on the faith of that Officer's signature. The law in its existing state allows all reasonable weight to be given to Settlement Records, and they cannot recommend any alteration which would have the effect of making them conclusive evidence.

The omission of Regulation VII of 1822 from the list published of regulations in force in the Punjab.

34. With reference to the omission of Regulation VII of 1822 from the list of Regulations in force in the Punjab, submitted with No. 6436, dated 7th December, 1867, it may be observed that the list was prepared in 1863 by Mr. Cust, Judicial Commissioner, as stated in that letter; and it did not profess to include Regulations regarding rights connected with land. There was reason to believe that all Revenue Laws were designedly omitted by Mr. Cust, and at the time when the list was prepared these laws did not immediately concern the Civil Courts. It will be remembered that it was stated in the Court's letter that it refrained from expressing any opinion as the correctness or completeness of this list.

The Judges are of opinion that legislation is absolutely required.

35. Coming now to the second of the two heads into which this reply is divided, the Judges have at once to express their opinion that legislation is absolutely required. The confusion into which this subject has been thrown cannot be remedied in any other way. Nor can any but a beneficial result be expected from a legislative declaration of principles that have been already acknowledged in judicial decisions, of which the records of the Financial Commissioner's Office will furnish examples. Those decisions have been followed by the Chief Court, in cases of which some have been reported and are noted in the margin *

* Gopal Singh, *V.* Jowahir Singh 3. *Punjab Record*, No. 1, dated 5th December, 1867.

Nuthoo Khan, *V.* Sooltan, 3. *Punjab Record*, No. 18, dated 24th January, 1868.

Het Ram, *V.* Toortee, *Punjab Record*, No. 42, dated 15th February, 1868.

36. A great part of the present Bill is confined to a declaration of the principles already thus adopted as the existing law, or custom, of the province; but exception must be made in reference to the provisions for sub-leases and alienation contained in Sections 26 and 27, Part III. The legislature is however apparently aware that the proposed enactment will alter what is regarded as the existing law in this respect, and as further remarks on this subject are made in going through the Sections of the Bill (which seems to be the best mode of discussing it), nothing more need be said here on this point.

Sections 26 and 27 of the proposed Bill alter the existing law.

37. The Judges by no means intend that their remarks on the Bill should be considered as in their opinion exhausting all that could be said on the different sections and clauses, but as the call for their opinion is represented as urgent, and much diversity of opinion exists on the subjects treated of in the Bill, which is declared to be in the nature of a compromise, they submit their remarks at once.

The remarks of the Judges on the Bill.

CHIEF COURT, PUNJAB,
Lahore, 8th August, 1868.

C. BOULNOIS,
D. SIMSON,

Judges.

REMARKS ON THE SECTIONS AND CLAUSES OF THE BILL.

The Court is of opinion that the signature of the "proper officer," who is ordinarily a Tehseeldar, should not be held to be conclusive evidence of the agreement. In any case some definite procedure should be prescribed to show that the parties whose interests are concerned were properly represented, their consent regularly obtained, and the agreement duly signed and recorded at a certain time and place in the presence of the proper officer. The law of limitation affecting these agreements should be also stated, and the Court would suggest that it be 3 years from the date of any overt and tangible act done in pursuance of the entries such as dispossession or the collection of the enhanced rent.

Section 2.

The definition of the word "tenant" seems a little too general. It would include an under-proprietor in Talooqdaree tenures.

Section 3.

The Court considers that the repeal of Financial Commissioner's Book Circular XXXIII of 1860 should have retrospective effect, and as suggested by the Punjab Government in Secretary's letter, No. 381, dated 30th April 1868, to the Government of India, Civil Courts should not be debarred from trying cases merely because orders or decisions may have been passed under that Circular. It would be practicable to empower the Courts to hear and decide cases as if such orders or decisions had not been made; and considering the short period that the Circular has been in operation the best course seems to be to abolish its effect entirely, as well upon cases that have arisen between the years 1860 and 1868, as in future. It would perhaps be well also in computing the period of limitation applicable to the case, that the time between the passing of any order under that Circular which had the

Section 4.

effect of excluding the suit in the Civil Court should be deducted, provided the suit was instituted within 12 months from the date of the Act repealing the Circular.

Section 5. *Clause* 1.—A date should be fixed from which the rules laid down shall be applied, otherwise this clause would be, to some extent, inconsistent with Section 7.

Section 6. *Clause* 1. It is in many instances difficult to discover what rules were laid down by the Settlement Officer. Several Settlement Reports have not been printed, and many of those printed are not now procurable. In some, *e. g.* Multan Settlement Report, several important apendices regarding tenures have not been printed.

Clause 3.—The condition mentioned in this Clause is uncertain in its application, and difficult to ascertain with precision. The words "class," "ordinary," and "adjacent" are open to objection, and their meaning should be explained. Different officers might take different views.

Section 14. The Judges highly approve of the principle stated in this Section, but they do not understand why it should not have retrospective effect. In all former cases in which there was a change from rent in kind to rent in money, without the consent of either the land-lord or tenant, the Settlement Officer should be empowered to allow parties to revert to the previous custom, if either of them desired it, notwithstanding that the commutation had been made by an order of Court.

Section 16. It should be stated by whom the cost of serving the notice, and the cost of making the appraisement should be borne.

Sections 20 and 21. The notice of ejectment need not be served before the 1st day of April, and the tenant if he intends to dispute the ejectment must institute a suit for that purpose within 15 days. This seems too short notice, and in very many cases the time allowed would not be sufficient to enable the tenant to make arrangements to bring his suit : at least one month's notice should be given.

Sections 26 and 27. Much doubt may be felt whether the tenant should have unrestricted power of alienating the land in his occupancy, and whether he should sublease or alienate without the consent of the land-lord. If the tenant is allowed to sublease his holding it would probably be well to insert a provision to the effect, that if he did not receive any part of the produce for a certain period, he should be held to have abandoned his right of occupancy—(See Section 25 of Mr. Brandreth's Draft Bill.) Further if the tenant is allowed to alienate the land in his possession, the land-lord should be declared to have the right of pre-emption.

Clause 34. It is not stated what appeal law will apply to the Revenue Courts. The Court would suggest that the following words be added to the Section:—"And the law of appeal shall be the same as for appeal in Civil suits for the time being in force in the Civil Courts."

REPORT OF A COMMITEE APPOINTED BY THE HON'BLE THE LIEUTENANT GOVERNOR OF THE PUNJAB TO CONSIDER AND REPORT UPON THE PROVISIONS OF A BILL TO DEFINE AND AMEND THE LAW RELATING TO TENANCY OF LAND IN THE PUNJAB.

Murree, September 6th 1868.

We, the undersigned members of a Committee appointed under orders of the Honorable the Lieutenant Governor to consider and report upon the provisions of the Bill to define and amend the law relating to the Tenancy of Land in the Punjab, as amended by the Select Committee of the Legislative Council of the Goverment of India, having considered the said Bill, and also the papers named in the margin,* beg to report as follows :—

* 1, Minute of the Honorable the Lieutenant Governor of the Punjab, dated 10th February 1868,
2, The Draft Bill of the Honorable the Lieutenant Governor, and Memorandum of March 20th 1868.
3, Mr, Roberts' Memorandum of do, do. do,
4, The Minute of the Chief Court of the Punjab.
5. Replies to questions on the subject of Tenant Right in the Punjab.
6. Report of the law Branch of the Panjab Anjuman, with their amendments and alterations.
7. The Oude Tenancy Bill.

1. The Committee have not in every instance been unanimous in their recommendations; and, in such cases, the opinions of either party, and the grounds on which they rest, are set forth in this report.

2. *Section* 2.—The Committee recommend the omission in Section 2 of all that part of the Section which follows the words " agreement is in writing" down to the words, " January 1868," and the substitution for it of the words, " executed by the parties, or recorded by a Judicial Officer in a separate proceeding during Settlement." Mr. Prinsep, Rai Mul Sing and Munshi Gopal Das would further add the words, " the said proceeding to be signed by the said officer, to be in the form of a separate file, containing evidence that such parties were present."

The reason assigned for Mr. Prinsep's addition is, that it will be a clear guidance to the Court, and will obviate any misconstruction of the word "proceeding."

3. The Committee further recommend the omission of the clause commencing " all entries " &c., down to the end of the Section; inasmuch as it would to a large extent neutralize the operation of the Act, especially in regard to Parts III and IV, including the important subjects of enhancement and ejectment.

4. *Section* 3.—With regard to the objection taken by the Judges of the Chief Court to the defination of " Tenant," the Committee recommend the addition to the definition of " landlord" of the words, " *or Taaluqdar, as defined in Section V of Directions to Settlement Officers North West Provinces,*" and to the definition of " tenant" of the words " to a landlord." The Committee recommend that the following definition be added to Section 3. " Jaghirdar is one to whom an assignment of Government Land Revenue has been made on condition of Civil or Military Service."

5. *Section* 4.—With regard to Section 4, the Committee are of opinion that all those portions of the Punjab Civil Code, which conflict with the provisions of the Bill, should be expressly repealed, along with Financial Commissioner's Book Circular No. 33 of 1860.

6. *Section* 5, *Clause* (1).—The Committee recommend the following modification of Clause 1 of Section 5. "Every tenant who, beyond the amount "of land revenue and village cesses, for the time being chargeable upon land "occupied by him, has paid nothing, nor has rendered customary service in "recognition of proprietary right to the proprietor in respect thereof, and whose "father and grand-father, uncle and grand-uncle, occupying the same land, have "paid nothing therefore beyond the amount of land revenue and village cesses "for the time being chargeable thereon, nor have rendered customary service "in recognition of proprietary right to the proprietor for the time being in "respect thereof."

7. *Clause* 2.—As to Clause 2, the Committee, with the exception of Mr. Egerton, consider that tenants of the class described therein should be liable to eviction only in the case mentioned in Clause 1 of Section 17, viz., when a decree for arrear of rent has remained unsatisfied for 15 days; and that they should not be liable to eviction under the conditions mentioned in Clause 2 of Section 17, viz: where tender of compensation has been made. Mr. Egerton considers the exemption of this class of tenants from liability to eviction on payment of compensation, to be unnecessary; because in all cases in which it could be proved that a tenant of the class specified is deserving of special consideration, it is certain that a proprietary tenure of some kind will have been conceded. This Clause might, the Committee further consider, be properly placed in order prior to Clause 1; as it proposed to confer on the class of tenants specified in Clause 2 an indefeasible right of occupancy, it seems desirable that they should stand first in the classification.

8. *Clause* 3 *of Section* 5.—In Clause 3 the Committee recommend the insertion, after the word "*representative,*" of the words, "in not less than the third generation;" the insertion after the word "cultivator," of the words "other than as a mere artizan or menial;" and the addition to the Clause of the words, "provided that such occupancy shall have been continuous." The grounds of this proposed amendment are, that the provisions of the Clause, extending as they at present do, to the immediate representative of *any* person who settled along with the founders of the village, are calculated to produce inequitable results in numerous instances of villages which have been founded since annexation and are being founded at the present day.

Mr. Prinsep and Munshi Gopal Das, would further recommend the addition to Clause 3 of a proviso "that the land so occupied is the same as that originally acquired at the founding of the village."

9. The Committee recommend the addition of a fifth class to those enumerated in Section 5, *viz*:

"(5). Who has been located, as cultivator in his holding by some "person in authority other than the proprietor, and has occupied continuous-"ly for 20 years."

10. With regard to Section 5, the Committee further observe that the enquiries hitherto made have not been sufficiently exhaustive to render it safe

to restrict tenants having a right of occupancy to the classes enumerated in the Section as it stands. Other circumstances, which ought to confer a right of occupancy, may exist in other parts of the Province than those already examined; and it would be dangerous to lay down any rigid rule which would prevent those circumstances from being taken into account: while from the fact of definitions being given by the Act, the Courts might infer that the classes enumerated, *and those alone*, were entitled to rights of occupancy. The Committee therefore recommend the addition of the following proviso to Section 5:—

"Provided that nothing contained in this Section shall be held to preclude the investigation of claims to a customary right of occupancy upon grounds other than those enumerated."

11. The following proviso should also, the Committee think, be appended:—

"The provisions of this Section shall not apply to—

"(*a*). Proprietors cultivating land common to a village or portion of a village.

"(*b*). Proprietors cultivating the land of other proprietors in the same village."

12. As to Section 6, the Committee are unanimously of opinion that it is desirable that the words "sanctioned by the Local Government previous to 1st January 1868" should be omitted; and also that the 1st ground of rebuttal should be omitted; they concur in the principle that an entry on a Settlement Record should create a presumption in favor of the facts recorded, and that were parties acquiesce in the proposed alteration, it may be made without a judicial award; but with respect to cases in which there is a dispute, the Committee differ in regard to the procedure to be followed. Mr. Prinsep and the native gentlemen of the Committee consider that Settlement officers should have power after summary enquiry to vary the record in accordance with their own opinion as to the position which the tenant should hold, leaving dissatisfied parties to contest the propriety of the variation by Civil suit. Mr. Egerton, Mr. Melvill and Mr. Thornton consider that no variation of the record of a tenant's status made in Regular or Revised Settlement, should be allowed in a disputed case without a judicial decree.

13. The reasons urged by Mr. Prinsep and the native gentlemen in support of the course recommended by them are as follows: first, as to the summary enquiry, because—

(*a*.) The presumption on the old entry should not be accepted without a classification on the merits according to custom as to who really have a right and who are mere tenants-at-will;

(*b*.) It is impossible to know who really even answer to the definition of Section 5, as defined in the Act, and who are the 3rd class of tenants, viz; tenants-at-will;

(*c*.) If the presumption is to be secure till a petition is given, it is apprehended that at a revision of Settlement few proprietors will so petition; and by not doing so, they will sustain direct injury, while Settlement officials will be compelled to record what they know to be wrong;

(*d.*) If there is to be no rectification of previous record without formal petition, some tenants will receive a good and clear title by the judicial enquiry, while many will be left with an uncertain title continuing from year to year, in which case it is not worth while for Government to go to the expense of a Revised Settlement at all;

(*e.*) Settlement officials, knowing that there can be no interference however erroneous the entries may be, will be careless in the preparation of a reliable record representing the real tenures as they exist in the country.

14. Mr. Egerton, Mr. Melvill and Mr. Thornton, on the other hand consider that it is undesirable to give Settlement officers of all grades a wholesale power of altering the record of a tenant's status by a summary enquiry; which would not be final but merely the preliminary to a suit. They consider it to be better that no record of the status of a tenant with a right of occupancy should be altered unless there has been consent of parties, or a judgment of Court; and, as in the Punjab all Settlement officers are invested with Judicial powers,—as the stamp proposed for suits in disputes regarding entries in a former Settlement on the subject of rights of occupancy is 8 annas only,—and as the time occupied in deciding these cases judicially so as to give them the force of decrees would very little exceed that which the proposed summary enquiry would consume,—they deem it better that such changes of record should be made only in one or other of the above named ways, *i. e.*, consent of parties or decree of Court.

With regard to the objection urged by Mr. Prinsep and the native gentlemen, that unless the Settlement officers had the power of summarily altering the record, they would be unable to frame a complete accurate record of existing rights, Mr. Egerton, Mr. Melvill, and Mr. Thornton consider that, even supposing the entries on a Settlement Record to have been made on imperfect enquiry, it is a less evil to allow such entries to remain until disproved on the motion of the parties, than to allow them to be varied *proprio motu* by Settlement officers without any initiative being taken by those principally concerned.

15. With regard to the 3rd ground of rebuttal; Mr. Prinsep and the native gentlemen are of opinion that a proprietor should be able to rebut the presumption of occupancy rights by showing a customary power of eviction existing up to British rule. Mr. Egerton, Mr. Melvill and Mr. Thornton would prefer a fixed term of years, such as 30 or, if necessary, 40 years. In support of their view Mr. Prinsep and the native gentlemen urge—

"(1st.) That by fixing a definite period, the custom as it exists even in " a continuous way, and the obligation which arise out of such custom, will not " be properly recognized. This custom prior to annexation being, as is univer- " sally allowed, that proprietors had the power of eviction, and as matter of " fact did exercise that power, there being no law opposed to such an usage."

"(2nd.) That if a period is thus fixed, in districts not as yet brought " under Settlement, no one knows when such Settlement will be introduced, " the period will be decreasing from year to year to the prejudice of the proprie- " tors, there being no guarantee that the simple and ignorant people of villages " will bring their suits to change the recorded status of their tenants at once " as is contemplated in the Section of the Bill."

16. Mr. Egerton, Mr. Thornton and Mr. Melvill consider that it is better to have a definite period of years fixed for the purposes of limitation as laid down in the Bill, because—first, the law of limitation should be uniform, which it would not be under the system proposed by Mr. Prinsep and the native gentlemen, owing to the fact that different parts of the province were annexed at different dates; and, next, because to make the period of annexation the date up to which the continuance of the custom must be proved, would at present give somewhat too short a period of limitation, and in the lapse of time will eventually give too long a period. The existence of a custom at the date of annexation may be good reason for enforcing such custom *now*, but would be no sufficient reason for enforcing it a century hence, while every year will add to the difficulty of proving it.

17. In pursuance of the above views Mr. Prinsep and the native gentlemen propose the following amendment in lieu of Section **6** :—

"Every tenant whose name appears in the records of a Regular or "Revised Settlement as having a right of occupancy in the land which he or "the person from whom he has immediately inherited, has continuously "occupied from the entry of his name or the name of such person (as the case "may be) in such Settlement, shall have merely a presumptive right of occu- "pancy in the land so occupied.

"(*a*.) The landlord may rebut such presumption by showing—

"(1.) That the entries in such record do not show that the tenant has "a right of occupancy according to the definition in the clauses of Section 5.

"(2.) That the tenant has voluntarily admitted before any officer "employed in making or revising a Regular Settlement of land revenue, or "before any officer authorized to attest the entries in the record of Settle- "ment, that he is a tenant-at-will, and that such admission has been recorded "at the time by the officer so employed, or authorized, or may hereafter be so "recorded.

"(3.) That the entry in the first record was not in accordance with a "custom locally recognized and acted upon till the commencement of British "rule."

"(*b*.) If the tenant having merely a presumptive right wishes to im- "prove his tenure, in accordance with the Clause of Section 5, so as to secure "an actual right of occupancy, he may by bringing a suit and proving his title "obtain the right of occupancy on these conditions :—

"(1.) That when the Settlement is being made or revised, a proper "officer be allowed to sift such tenants as have a right of occupancy and such "as are tenants-at-will by the consent of both parties, after being duly "confronted.

"(2.) That the remaining tenants be classed by such officers, as those "who fall under the definitions of Section 3, and those who are only tenants- "at-will.

"After this sift, a full and separate *misl* of enquiry before such officer, "with evidence should be recorded in each case.

"If the landlord is dissatisfied with the award giving right of occupancy, "he may contest it, in civil suits, on an 8 annas stamp.

"If the tenant-at-will is dissatisfied with being declared a tenant-at-will, "he can sue to prove his title, on the same stamp.

"The period for contesting such awards to be three years after the date "of the officer's award."

18. Mr. Egerton and Mr. Thornton, on the other hand, propose in lieu of Section 6, the following—

"Every tenant whose name appears in the records of a Regular or "Revised Settlement as having a right of occupancy in lands which he or the "person from whom he has immediately inherited has continuously occupied "from the entry of his name or the name of such person as the case may be "in such Settlement, shall be presumed to have a right of occupancy in the "land so occupied unless—

"(1.) The tenant has voluntarily admitted or shall voluntarily admit "before any officer making or revising a Regular Settlement of land revenue, "or before any officer authorized to attest the entries in the record of such "Settlement, that he is a tenant-at-will, and such admission has been or shall "be recorded at the time by the officer so employed or authorized; or

"(2.) In the case of tenants not falling within any of the definitions "contained in Section 5, the landlord shall establish in a regular suit that the "entry was opposed to a custom locally recognized and acted upon within 30 "years previous to the institution of the suit."

19. The Committee consider that it would be desirable to make some provision under this Section for affording protection in the 21,300 cases in which protective leases for years have been granted in the course of recent Settlement operations, by way of compensation for some interest of the occupant in the land.

See Chief Court Minute, Section 31.

On the one hand the Chief Court has ruled that compromises of this sort are unsanctioned by custom and unknown to the law; on the other, Mr. Roberts and Colonel Lake have expressed a strong opinion in favor of the fairness and thoroughness of the procedure by which these decisions were arrived at, and of their substantial equity. The same view is expressed by His Honor the Lieutenant Governor in his Minute of 10th February 1868 para. 25; and the Committee think that, considering the admitted care and impartiality of the enquiries, and the serious inconvenience involved in upsetting so many thousand decisions, it would be unwise merely on the ground of novelty of principle or irregularity of procedure to invalidate them. They propose, therefore, the following Section to follow Section 6:—

"6 *a*. Whenever a Settlement officer in the course of Judicial proceed-"ings, has varied the record of a previous Settlement with regard to the tenure "of a tenant having or claiming to have a right of occupancy, and has awarded "to such tenant by way of consideration for any loss he may have sustained by

"the variation so awarded, a terminable lease of the lands occupied by him, such "award shall not be open to reversal on the ground that the tenure so created "is a new one, or that the principle of compensation is unsanctioned by custom "but it shall be open to any person who shall not have been an assenting party "to such award to contest its validity by a regular suit, within 3 years, on the "ground that some finding of fact, material to the decision, is contrary to the "facts of the case.

20. A suggestion by Mr. Prinsep to insert the words "as considered by the Chief Court" after the words "unsanctioned by custom," and a suggestion by Agha Kulb Abid to omit all that part of the Section from the words "such award" down to the words "unsanctioned by custom but," are opposed by a majority of the Committee.

21. *Section* 6—*Explanation.*—As to the "explanation" in Section 6, the Commitee think it undesirable to lay down an inflexible rule on the subject. The native gentleman consider that the custom with regard to it differs in different districts, and that the prevailing custom might in each instance be safely left to the investigation of the Courts.

22. *Part III—Section* 8.—In Section 8 the Committee propose to read, instead of the words "agreement to the contrary" the words "agreement or a decree of Court made previous to the passing of this Act to the contrary effect" and in the last line but one to read "shall have" for "has."

23. *Section* 9.—In Section 9, the Committee, with the exception of Mr. Prinsep, propose the following addition, by way of explanation, to the first ground of enhacement.

"A tenant with a right of occupancy, holding uncultivated land, shall, "subject to the provisions of Sections 28 and 29, be liable to enhancement in the "event of that land, or any portion of it, being brought into cultivation."

24. The grounds of this addition are that tenants with a right of occupancy occasionally hold uncultivated ground for which the landlord has a good right to rent upon its being brought into cultivation. Mr. Prinsep dissents, as he questions the right of the tenant with a right of occupancy to extend the cultivation of his holding without the express permission of his landlord.

25. In the rule following the first ground of enhancement, the Committee propose to read, for the words "this case" the words "these cases," and, for the word "rest of the land" the words "lands of the same description."

26. In the 2nd ground of enhancement the word "village" should be inserted in line 2.

27. In the 3rd ground of enhancement, the Committee recommend the following amendment in the Clauses regulating the rates :—

"If he belong either of the classes specified in Clauses 1 and 2 of Sec-"tion 5, more than 25 per cent.

"If he belong to either of the classes specified in Clauses 3 or 4, or to "the class proposed to be added by the Committee in Clauses 5, more than 15 "per cent.

"If he belong to the classes specified in Section 6, more than 10 per "cent.

"If he belong (to the classes provided for in the provison added to Section "5, *i. e.*,) to the class of persons who may be able to establish a customary right on "other grounds than those specified, more than 25, 15 or 10 per cent, according "to whichever of the foregoing classes it shall seem equitable to the Court to "assign him."

28. The Committee consider this reduction of rates necessary, because a rule, excepting the tenant from enhancement unless his rental was more than 50 per cent below ordinary cultivating rates would practically debar the proprietor from the receipt of any rent whatever from tenants with a right of occupancy of classes 1 and 2, inasmuch as ordinary tenants do not pay malikana at a rate of more than 50 per cent on the jumma.

29. In line 2 of the last paragraph of the third ground of enhancement the Committee recommend the omission of the words "of the same class," as it does not appear to what other class it is intended to refer, the class of tenants in question being tenants-at-will.

30. *Rule, 3rd ground of enhancement.*—In the Rule, the Committee recommend that the words "shall enhance" should be modified by the addition of the proviso "provided that there no special circumstances which make it equitable that a lower rate of rent should be paid."

31. *Section* 12.—With regard to claims for abatement of rent, a majority of the Committee think that it would be equitable, since landlords are allowed by the Bill to enhance on the ground of a general advance of rental, to allow the tenant to claim abatement on the ground of a general decline. They therefore propose the following as a 3rd ground of right to abatement:—

(3). "That there has been a general fall in the rate of rent usually paid "in the same village or adjoining villages by tenants-at-will for land of a simi- "lar description and with similar advantages, provided that a remission of "Government jumma has been already allowed by competent authority on the "same grounds in respect of the same estate."

32. Mr. Egerton does not concur in recommending this amedment, in asmuch as it appears to him to proceed on the suppositon that the rights of the landlord and the tenant in the soil are equal; whereas in his opinion the rights of the landlord are far superior to those of. the tenant, and it does not follow that because a landlord is entitled to enhance when surrounding rents have risen, that a tenant has a right to abatement because rents have declined.

33. *Section* 14.—With reference to Section 14, and to the observations contained in the Minute of the Judges of the Chief Court on the subject of the commutation of cash payments of rent into payments in kind, the Committee strongly deprecate the proposed permission to return, on the application of either party, to a system of payments in kind even in the face of a decree of Court; such a change would, it is believed, be regarded with the utmost dissatisfaction by the cultivators: and though such a return would be no doubt acceptable to the landlords, it would, in the opinion of the Committee, be a hardship

upon the tenants to return against their will to a system, which has been abandoned for the last 10 or 12 years, in many cases after a Judicial proceeding.

34. The Committee would recommend that the heading of part IV should be "Ejectment, Relinquishment, Alienation and Succession," in order to correspond with the changes which they propose.

35. *Section* 17.—As to Section 17 the Committee concur in considering the proposed standard of compensation, viz., the amount of rent payable by the tenant, to be open to the objection that, under such a system of calculation the higher the class of tenant the smaller would be the amount which the landlord must tender as a condition of eviction. The amount, moreover, would, even in the lowest cases be excessive, inasmuch as twelve years' purchase of the rent, in sense in which rent is used in the Bill, would be more than double the average selling price of proprietary rights in land in the Punjab.

36. While agreeing so far, the Committee differ as to the amendment to be made on the 2nd Clause of Section 17. Mr. Egerton proposes the following:—" Such compensation as the Court thinks fit, not less than 12 and not "more than 20 times the amount of the average annual profits realized during " the last five years by tenant, and over and above the sum payable to such " proprietors.

37. Mr. Thornton proposed the following amendment:—

" Such compensation as the Court thinks fit, not less than 15 and not " more than 30 times the amount of yearly profits realizable by him: and the " amount of yearly profits shall, for the purposes of this Section, be in the dif- " ference between the maximum rent payable by the tenant, according to the " provision of Section 9, and the rent payable by tenants not having a right of " occupancy for land of a similar description and with similar advantages in the " same village or adjacent villages."

38. Mr. Thornton's amendment is framed with a view of not measuring the sum to be tendered on eviction by the actual profits realized by the tenant with a right of occupancy; first, because the amount of such profits would be very difficult to discover; and secondly, becaue such a method of calculation would be a direct encouragement to landlords to exact the highest possible rates of rental allowable by law, from the tenants with a right of occupancy, in order that the amount of compensation to be tendered on eviction may be reduced to a minimum. The standard by which the interest of tenant with a right of occupancy is to be valued, should, he considered, be something independent of the landlord's will, and reprsent rather the profits *realizable* according to law, than the profits *actually enjoyed.*

39. Mr. Egerton objects to Mr. Thornton's proposal, because the adjustment of compensation is therein made to depend on the difference between the rent payable by a tenant-at-will and maximum rent payable by a tenant with the right of occupancy. This difference is, he considers, no measure of the profits of the latter, and would in many cases give most unfair results, especially when the difference between the rents payable by the two classes of cultivators is small, as it often is. The only sure measure of the value of the tenant's right of occupancy is, he considers, the amount of profit

he receives, and this can be discovered only by enquiry and cannot be fixed by an arbitrary rule.

40. Mr. Thornton's amendment was supported by Mr. Prinsep, Moonshee Gopal Das and Agha Kulb Abid. Mr. Melvill was absent.

41. *Section* 19.—To Section 19 the Committee recommend the addition of the following proviso :—

"Provided that if, while his rent is in arrear, he has failed to cultivate "the land for which the arrear is due in accordance with the terms on which "he holds it, he may be ejected therefrom by a decree of Court at any time."

42. As to Sections 20 and 21, the Committee concur with the Judges of the Chief Court in considering that the tenant should have a clear month's notice to enable him within that period to contest the ejectment. They therefore recommend that the notice provided in Section 21 should be served on or before the 15th day of March instead of, as the Section at present stands, the 1st day of April. They further suggest that the period during which a suit, to contest liability to ejectment, may be brought, should be limited to one month from receipt of service of such notice. In Section 20 accordingly, they would read instead of "on or before the 15th day of April next" the words "within 30 days;" and substitute in the last line of the paragraph for "before that date," the words "before the 15th day of April."

Section 21. Also in Section 21 for "1st day of April," read "15th day of March;" and

Section 22. In Section 22 for the words "on or before the 15th day of April next," read "within 30 days;" and for the words "on that date," read "on the 15th day of April."

43. *Section* 22.—In this Section the Committee further recommend the omission of the words "unless after service the landlord has expressly authorized him to continue to occupy the land," on the ground that if the landlord has after notice of ejectment given the tenant permission to occupy, the tenant would be entitled to do so without any distinct enactment to that effect, while on the other hand, the insertion of the words suggests a false and vexatious defence.

44. *Section* 24.—As to the provisions with reference to growing crops, in Section 24, the Committee recommend the following amendment, as being more in accordance with the custom of the country then the arrangement provided in the Section :—

"Any tenant ejected in accordance with the provisions of this Act shall "be entitled to cut and remove any crops, or other ungathered products of the "soil, which at the time of the ejectment shall be fit for cutting and removal and "to receive from the landlord the value of any crops or other ungathered pro- "ducts of the soil which shall not at the time of the ejectment be fit for cutting "and removal, and also the value of any immovable property in or upon the land "at the time of the ejectment to which the tenant is, by custom or express "agreement, entitled. Provided that if the land has been sown or planted or

"the immovable property has been placed in or upon the soil by the tenant "after the service upon him of the notice mentioned in Section 20 or after a "decree for his ejectment shall has been made, he shall not be so entitled."

The omission of the last Clause of the Section is recommended on the same grounds as were urged for the omission of the Clause as to express authorization in Section 22.

45. *Section* 25.—In Section 25 the Committee recommend the following amendment, *viz* : to read for the words "year commencing on the 15th day of April in any year after the passing of this Act," the words "year commencing on the 15th day of June in any year after the passing of this Act" ; and in lieu of the words "that day," the words "the first day of January preceding" ; and to insert after the word "accordingly" the words "on the 15th day of June". The practice of a cultivator giving notice to his landlord on January 1st is already sanctioned by a general and well recognized custom ; the object of notice being given at this time is probably, that the proprietor may be able to get a new tenant as it is more difficult for a landlord to find a new tenant than for an outgoing tenant to find a new holding, it is necessary that the notice to *relinquish* given to the landlord by the tenant should be longer than the notice of ejectment given by the landlord to the tenant.

46. *Section* 26.—The committee suggest the insertion at this place of some rule as to the succession of rights in the case of tenants with a right of occupancy, as to which at present great uncertainly appears to exist. With this view they would recommend that Sections 26 and 27 be entitled "Succession and Alienation," and that in lieu of them the following be read—"In the absence of a special custom to the contrary, the right of occupancy in "the case of tenants with a right of occupancy shall descend to the direct "lineal male heir or heirs whether by birth or adoption of the deceased "occupant, or failing direct lineal male heirs, to his widow on a life tenure."

See Chief Court's ruling in *Gopal Sing and others v. Jawahir Sing and others*, Punjab Record for 1868, Civil Judgments, Case No. 1.

Section 27.—"The right of occupancy is not permanently transferable, "but tenants having a right of occupancy may temporarily provide for the "cultivation of their lands, on condition—

"(*a*) That they remain responsible to the proprietor for rent and "tillage; and

"(*b*) That the period for which such temporary provision is made does "not exceed two years without the consent of the proprietor.

"The provisions of this Section with regard to consent of proprietor and "limit of time shall not apply to cases in which a tenant entrusts the land "which he occupies to one of his heirs as limited in Section 26."

47. The Committee believe that the rule of succession above prescribed is in accordance with existing custom in the Punjab. With regard to the right of alienation given in Section 27 of the Bill, the Committee concur in considering that, as the power of alienation so conferred is entirely contrary to existing custom and to the existing law and records of early settlements, it is undesirable to introduce it.

48. *Section* 28.—With reference to compensation for tenants' improvements, the Committee propose the following amendment upon Section 28 :—

"*Section* 28. If any tenant with the consent of his landlord makes "any improvements in his land, the rent payable by him or by the persons "who inherit his rights shall not, for the period of twenty years after the "making of such improvements, be enhanced on account of the increased annual "letting value of the land resulting from such improvemennts, nor within the "period of twenty yerrs shall he or the persons who inherit his rights be ejected "from the same land, unless and until compensation be made for the money or "labour or both expended in making such improvements.

"In the case of tenants with a right of occupancy, if the landlord does "not within one month from the time when he shall receive notice in writ- "ing from the tenant of his intention to commence such improvements serve a "notice through the proper officer as described in Section 21 prohibiting such "improvements, he shall be taken to have consented to them."

49. The reduction of the period of immunity from enhanced rent to twenty years is recommended on the ground that, under the law in force in the Punjab in regard to the construction of new wells, the Government grants immunity from enhancement of revenue for 20 years only, and it would be unfair to make the landlord pay higher revenue for the improved land, while he was unable to exact a higher rent.

50. *Section* 29.—With respect to the definition of improvements, Mr. Prinsep objects to the words in the 1st Clause "the reclaiming and clearing of waste land and jungles" on the ground that the words implied a right of clearing and reclaiming waste land, in the case of tenants with a right of occupancy, without the express permission of the landlord, a right which in his opinion does not exist.

The Committee recommend the omission of the words "and jungles" in this clause, as unnecessary.

51. *Section* 31.—In Section 31, the Committee recommend to read at the end of the Section instead of the words "rate at which he would otherwise have held," the words "rate at which he would have held irrespective of such improvements."

52. *Section* 32.—With respect to Section 32, the Committee recommend that the tender and acceptance of a beneficial lease for *fifteen* years shall bar all claims on the part of the tenant to compensation ; as they have, in Section 28, proposed to shorten the period during which rent may not be enhanced on account of improvements, the apparent object of this Section, *viz.*, to induce proprietors to give such leases, will not be effected unless the period prescribed is also shortened.

53. *Part VI—Procedure.*—As to the procedure provided by the Bill, the Committee are of opinion that Section 34, as it stands, is inconsistent with procedure now in force for cases of this description, and does not meet the object with which this Section was originally proposed by the Hon'ble the Lieutenant Governor and the Murree Committee, *viz :* to provide that in certain cases

the final appeal should lie to the Financial Commissioner. There is in fact no other practical difference between the Revenue and Civil sides of the Courts in this province, than that in the one the final appeal lies to the Financial Commissioner, in the other to the Chief Court. The Committtee consider that all *Judicial* cases provided for in the Act without distinction should be heard and disposed of on the Civil side, subject to the provisions of Section 21 of Act XIX of 1865. The following amendment on Sections 33 and 34, is therefore suggested:—

"*Section* 33.—Judicial cases cognizable under Sections 5, 6, 9, 12, 16, " 18, 22, 30, shall, unless otherwise provided for by any Act at the time being " in force, be heard in the Civil Courts other than Courts of Small Causes, unless such Courts of Small Causes shall have been specially empowered by the " Local Government under Section 6 of Act XI of 1865, to hear such cases; all " other applications under the Act, viz. applications made under Sections 15, 17, " 18, 21, 23, 25 shall, be considered as proceedings on the Revenue side, and " shall be subject to the ordinary rules of procedure in such cases."

54. This amendment will render Section 34 unnecessary; and with reference to the changes proposed in the two Sections 33 and 34, the Clause which the Chief Court proposed to add in the last para. of their Minute may be dispensed with.

55. The Committee recommend the omission of Section 35, inasmuch as no special procedure for the recovery of rent is in force in the Punjab.

56. The Committee suggest the following scale of stamps:—

1. Suits for rights of occupancy or for declaration of rights of occupancy under Section 5,	8 annas.
2. By proprietor to rebut presumptive right under Section 6, ...	8 annas.
3. Suit for enhancement of rent under Section 9,	Five year's value of the enhancement.
4. Suit for abatement by tenant under Section 12,	8 annas.
5. Application for person to superintend appraisement of division of crop under Section 15,	8 annas.
6. Regular suit to contest appraisement,	Ordinary stamp on value of the amount disputed.
7. Ejectment of tenant with or without right of occupancy, Sections 17 and 18, ...	8 annas.
8. Application, to serve notice ejectment under Section 21, ...	8 annas.
9. Suit to contest right of ejectment, Section 22,	Ordinary stamp on 1 year's rent.
10. Application for assistance to eject under Section 23, ...	8 annas.

11. Application to serve notice to landlord on relinquishment by tenant, Section 25, ... 8 annas.

12. Application for adjustment of compensation for improvements, Section 30, ... 8 annas.

The low rate of stamp duty prescribed in the case of suits for rights of occupancy and for declaration of rights of occupancy, and of suits by a proprietor to rebut a presumptive right under Section 6, have been proposed because it is the unanimous opinion of the Committee that, (*a*) the utmost facility should be afforded for the final adjustment of such cases between landlord and tenant; (*b*) that as the necessity for such suits has arisen in a great degree from the imperfect nature of the enquiry made at former settlements, it would be unfair now to charge the full stamp prescribed for regular suits. Further, the opinions expressed in regard to the procedure to be followed under Section 6 are all given on the supposition that the above low rate of stamp duty will be admitted, and the Committee feel strongly that the successful working of this portion of the Act will in a great measure depend upon the adoption of a scale so low as not to be prohibitive of free resort to judicial tribunals.

(Signed) R. E. EGERTON.
P. S. MELVILL.
T. H. THORNTON.
EDWARD PRINSEP.

آغا کلب عابد اکسٹرا اسسٹنٹ کمشنر
دستخط رائے مول سنگھ رئیس لاہور و گوجرانوالہ بقلم خود
گوپال داس اکسٹرا اسسٹنٹ کمشنر

(True copy)

H. S. CUNNINGHAM,
Secretary.

Asst. Secy. to Govt. Punjab.

THE TENANCY BILL WITH THE EMENDATIONS PROPOSED BY THE MURREE COMMITTEE.

PANJAB TENANCY BILL.

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BILL.

To define and amend the law relating to tenancy of land in the Punjab, as amended by the Select Committee of the Legislative Council; with the emendations proposed by the Murree Committee.

Murree, September 6th 1868.

Note.—The portions of the Bill proposed to be omitted are enclosed in brackets; the alterations and additions are distinguished by being printed in italics.

Preamble.

WHEREAS it is expedient to define and amend the law relating to certain matters connected with the tenancy of land in the Panjab; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title. Extent of Act.

1. This Act may be called "The Panjab Tenancy Act, 1868," and shall extend only to the territories for the time being under the Government of the Lieutenant Governor of the Panjab.

Saving of decrees and of agreements between landlords and tenants.

2. Nothing contained in this Act shall affect the operation of any decree of Court under which a tenant holds or of any agreement between a landlord and a tenant, when such agreement is in writing [or recorded by the proper officer in the record of a regular settlement sanctioned by the Local Government previous to the first day of January 1868] *executed by the parties, or recorded by a Judicial Officer in a separate proceeding during Settlement.**

[All entries in such record in respect of matters comprised in Parts II, III, IV and V of this Act shall, when attested by the proper officer, be deemed to be agreements within the meaning of this section.]

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Rent."

"Rent" means whatever is payable on account of the use or occupation of land;

"Arrear of rent."

Any instalment of rent which is not paid on or before the day when the same becomes due, whether under a written agreement or according to law or local usage, shall be deemed to be for the purposes of this Act, an arrear of rent

* *Addition proposed by Mr. Prinsep, Rai Mul Singh and Munshi Gopal Dass*—the said proceeding to be signed by the said Officer, to be in the form of a separate file, containing evidence that such parties were present.

"Land." "Land" means immoveable property for the time being subject to a settlement, whether regular or summary, of land-revenue;

"Landlord." "Landlord" means an person entitled to receive rent, but does not include a mere assignee of land-revenue; *or Taaluqdar as defined in Section V of Directions to Settlement Officers, North West Provinces;*

"Tenant." "Tenant" means any occupant of land liable to pay rent therefor *to a Landlord;*

"Grand-father," "uncle" and "grand-uncle." "Grand-father" includes the father of an adoptive father, "uncle" the brother of an adoptive father, and "grand-uncle" the adoptive father of an uncle;

"Representative." "Representative" means an heir or any other person taking by operation of law or by will a beneficial interest in the property of a deceased person.

"Jagirdar" is one to whom an assignment of Government Land Revenue has been made on condition of Civil or Military Service.

Repeal of Book Circular No. 33 of 1860. 4. The Book Circular of the Financial Commissioner of the Panjab, No. 33 of 1860, [is hereby repealed,] *and all such portions of the Panjab Civil Code as conflict with the provisions of this Act, are hereby repealed.*

PART II.

OF RIGHTS OF OCCUPANCY.

Tenants having rights of occupancy. Every tenant who—

[(1) has paid nothing in respect of the land occupied by him, and whose father and grand-father, uncle and grand-uncle, occupying the same land have paid nothing therefor, to the proprietor thereof for the time being, beyond the amount of land-revenue and village-cesses for the time being chargeable thereon.

(2) or who has involuntarily parted with proprietary rights in any land otherwise than by forfeiture to Government; and who has continuously occupied such land or any part thereof from the time of such parting;]

(1) *"has involuntarily parted with proprietary rights in any land otherwise than by forfeiture to Government; and who has continuously occupied such land or any part thereof from the time of such parting;*

(2) *or who, beyond the amount of land revenue and village cesses for the time being chargeable upon land occupied by him, has paid nothing, nor has rendered customary service in recognition of proprietary right, to the proprietor in respect thereof; and whose father and grand-father; uncle and grand-*

uncle, occupying the same land, paid nothing therefor beyond the amount of land revenue and village cesses for the time being chargeable thereon, nor have renderd customary service in recognition of proprietary right to the proprietor for the time being in respect thereof ;

(3) or who is the representative, *in not less than the third generation*, of a person who settled as a cultivator, *other than as a mere artizan or menial*, in the village in which the land occupied by such tenant is situate, along with the founders of the village ; *provided that such occupancy shall have been continuous* ; *

* *Addition proposed by Mr. Prinsep and Munshi Gopal Das*,—provided also, that the land so occupied in the same as that originally acquired at the founding of the village.

(4) or who is or has been jagirdar of the village or any part of the village in which the land occupied by him is situate, and who has continuously occupied that land for not less than twenty years ;

(5) *or who has been located as cultivator in his holding by some person in authority other than the proprietor, and has occupied continuously for twenty years*—

shall be deemed to have a right of occupancy in the land so occupied.

Provided that nothing contained in this Section shall be held to preclude the investigation of claims to a customary right of occupancy upon grounds other than those enumerated.

Provided also that this Section shall not apply to—

(*a.*) *proprietors cultivating land common to a village or portion of a village ;*

(*b.*) *proprietors cultivating the land of other proprietors in the same village.*

Presumption arising from entry in settlement record.

6. [Every tenant whose name appears in the records of a regular settlement sanctioned by the Local Government previous to the first day of January 1868, as having a right of occupancy in land which he or the person from whom he has immediately inherited has continuously occupied from the entry of his name or the name of such person (as the case may be) in such settlement, shall be presumed to have a right of occupancy in the land so occupied.

Rebuttal of presumption.

But the landlord may rebut such presumption by showing—

(1) that the entry in the said records was not made in accordance with the rules laid down by the settlement officer, as set forth in the official report or the records of the settlement ; or

(2) that the tenant has voluntarily admitted before any officer employed in making or revising a regular settlement of land revenue or before any officer authorized to attest the entries in the record of such settlement, that he

is a tenant-at-will, and that such admission has been recorded at the time by the officer so employed or authorized ; or

(3) that within the thirty years immediately before the institutin of a suit relating to the right of occupancy, other tenants of the same class in the same or in adjacent villages have ordinarily been ejected from their holdings at the will of the landlord.

Explanation—If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as the land given in exchange would have been subject to if the exchange had not taken place.]

* 6. *Every tenant whose name appears in the records of a Regular or Revised Settlement as having a right of occupancy in the land which he or the person from whom he has immediately inherited, has continuously occupied from the entry of his name or the name of such person (as the case may be) in such Settlement, shall have merely a presumptive right of occupancy in the land so occupied.*

* *Amendment by Mr. Prinsep and the Native Members.*

(*a.*) *The landlord may rebut such presumption by showing.*

(1.) *That the entries in such record do not show that the tenant has a right of occupancy according to the definition in the clauses of Section 5.*

(2.) *That the tenant has voluntarily admitted before any officer employed in making or revising a Regular Settlement of land revenue, or before any officer authorized to attest the entries in the record of such Settlement, that he is a tenant-at-will, and that such admission has been recorded at the time by the officer so employed, or authorized, or may hereafter be so recorded.*

(3.) *That the entry in the first record was not in accordance with a custom locally recognized and acted upon till the commencement of British rule.*

(*b.*) *If the tenant having merely a presumptive right wishes to improve his tenure, in accordance with the Clauses of Section 5, so as to secure an actual right of occupancy, he may by bringing a suit and proving his title obtain the right of occupancy on these conditions :—*

(1.) *That when the Settlement is being made or revised, a proper officer be allowed to sift such tenants as have a right of occupancy and such as are tenants-at-will by the consent of both parties, after being duly confronted.*

(2.) *That the remaining tenants be classed by such officers as those who fall under the de-*

finitions of Section 5; and those who are only tenants-at-will.

After this sift by a full and separate misl of enquiry before such officer, with evidence recorded in each case—

If the landlord is dissatisfied with the award giving right of occupancy, he may contest it, in a civil suit, on an 8 annas stamp.

If the tenant-at-will is dissatisfied with being declared a tenant-at-will, he can sue to prove his title, on the same stamp.

The period for contesting such awards to be three years after the date of the officer's award.

* *Amendment by Messrs. Egerton and Thornton.*

* 6. *Every tenant whose name appears in the records of a Regular or Revised Settlement as having a right of occupancy in lands which he or the person from whom he has immediately inherited has continuously occupied from the entry of his name or the name of such person as the case may be in such Settlement shall be presumed to have a right of occupancy in the land so occupied unless—*

(1.) *The tenant has voluntarily admitted or shall voluntarily admit before any officer making or revising a Regular Settlement of land revenue, or before any officer authorized to attest the entries in the record of such Settlement, that he is a tenant-at-will, and such admission has been or shall be recorded at the time by the officer so employed or authorized; or*

(2.) *In the case of tenants not falling within any of the definitions contained in Section 5, the landlord shall establish in a regular suit that the entry was opposed to a custom locally recognized and acted upon within 30 years previous to the institution of the suit.*

6*a*. *Whenever a Settlement Officer has varied the record of a previous Settlement with regard to the tenure of a tenant having or claiming to have a right of occupancy, and has awarded to such tenant by way of consideration for any loss he may have sustained by the variation so awarded, a terminable lease of the lands occupied by him,* * *such award shall not be open to reversal on the ground that the tenure so created is a new one, or that the principle of compensation is unsanctioned by custom;* † *but it shall be open to any person who shall not have been an assenting party to such award to contest its validity by a regular suit within three years on the ground that some finding of fact material to the decision is contrary to the facts of the case.*

* *Proposed by Agha Kulbabid, to omit the words following* occupied by him, *down* to unsanctioned by custom; but.

† *Proposed by Mr. Prinsep to add after* unsanctioned by custom, *the words* as considered by the Chief Court.

Non-acquisition of right of occupancy by lapse of time.

7. No tenant-at-will shall be deemed to acquire a right of occupancy by mere lapse of time.

PART III.

OF RENT.

1.—Enhancement.

Decree for enhancement of rent.

8. No tenant shall, in the absence of an agreement [to the contrary,] *or decree of Court made previous to the passing of this Act to the contrary effect*, be held liable, in a suit for arrears of rent in respect of any land, to pay rent exceeding in amount the rent payable by him in respect of such land for the year ending the fifteenth day of April last preceding, unless a decree for the enhancement of the rent [has] *shall have* been made as hereinafter provided.

Grounds of enhancement.

9. The Court may decree that the rent previously payable by any tenant having a right of occupancy may be enhanced on any of the following grounds:—

1st. Ground.—That the quantity of land held by him exceeds the quantity for which he has previously been liable to pay rent.

*A tenant with a right of occupancy holding uncultivated land shall, subject to the provisions of Sections 28 and 29, be liable to enhancement in the event of that land or any portion of it being brought into cultivation.**

Rule.—In [this case] *these cases* the Court shall decree rent for the land in excess at the same rate as that payable in respect of [the rest of the land] *lands of the same description* held by him of the same landlord.

2nd Ground.—That the rate of rent paid by him is below the rate of rent usually paid in the same *village* or adjoining villages by the same class of tenants having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff not exceeding such rate.

3rd Ground.—That the rate of rent paid by him is,

if he belong to *either of* the [class] *classes* described in [clause 1] *clauses* 1 *and* 2 of section five, more than [fifty] *twenty five* per centum,

if he belong to any of the classes specified in [clause 2, 3 or 4] *clause* 3, 4 or 5 of section five, more than [thirty] *fifteen* per centum,

[and] if he belong to the class specified in section six more than [fifteen] *ten* per centum,

if he belong to the class of persons who may be able to establish a customary right on other grounds than those specified in Section 5, more than 25, 15, or 10 per centum, according to whichever of the foregoing classes it shall seem equitable to the Court to assign to him,

* *Mr. Prinsep dissents from this amendment.*

below the rate of rent usually paid in the neighbourhood by tenants [of the same class] not having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff not exceeding such rate less [fifty] *twenty-five* per centum, [thirty] *fifteen* per centum or [fifteen] *ten* per centum, as the case may be. *Provided that there are no special circumstances which make it equitable that a lower rate of rent should be paid.*

Enhancement when revenue or cesses paid by tenant.

10. If the revenue or any of the village-cesses is payable by the defendant, the rate to which his rent may be enhanced shall be reduced by the amount so payable.

Suit for re-enhancement.

11. After a decree has been passed under section nine, no suit shall lie against the defendant for re-enhancement of his rent until the expiration of five years from the date of such decree, unless in the meantime there has taken place a general revision of regular settlement, under which the revenue payable for the land comprised in the decree has been increased.

2.—Abatement.

Grounds of right to abatement.

12. Every tenant having a right of occupancy shall be entitled to claim abatement of the rent previously paid by him on either of the following grounds, and on no others:—

(1) that the area of the land in his occupation has been diminished by diluvion or otherwise, or proved to be less than the quantity for which rent has been previously paid by him; or

(2) that the productive powers of such land have been decreased by any cause beyond his control.

(3) *that there has been a general fall in the rate of rent usually paid in the same village or adjoining villages by tenants-at-will for land of a similar description and with similar advantages, provided that a remission of Government jumma has been already allowed by competent authority on the same grounds in respect of the same estate.**

* *Mr. Egerton does not concur.*

3.—Remission.

When Court may allow remission from rent.

13. Notwithstanding anything hereinbefore contained, it shall be lawful for the Court, in making a decree for an arrear of rent, if the area of land in the tenant's occupation has been diminished by diluvion or otherwise,

or if the produce of such land has been diminished by drought or hail or other calamity beyond his control, to such an extent that the full

amount of rent payable by him cannot, in the opinion of the Court, be equitably decreed,

to allow such remission from the rent payable by him as may appear equitable:

Provided that if the tenant hold a lease for a term of not less than five years, or have a right of occupancy in a revenue-paying estate no such remission shall be allowed to him, unless a remission of revenue has been allowed on the same ground and by competent authority in respect of the same estate.

4.—Rent in Kind.

Commutation of rent in Kind.

14. No commutation of rent in kind into rent in money, and no commutation of rent in money into rent in kind, shall take place without the consent of both the landlord and the tenant.

Division and appraisement of produce taken for rent.

15. Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a similar nature, requiring the presence of the person entitled to the rent and of the cultivator, either personally or by their recognized agents,

if either party neglects to be present at the proper period,

or if a dispute arises between the parties regarding such division, estimate or appraisement,

either party may present an application to the Court, on a paper bearing a stamp of eight annas, requesting that a proper person be deputed to make the division, estimate or appraisement.

Procedure in case of dispute.

16. On receiving such application, the Court shall issue a written notice to the other party requiring him to attend on the date and at the place specified in the notice, and shall depute a proper person before whom the division, estimate or appraisement shall be made.

The award of such person in respect of the division, estimate or appraisement shall be final, unless within three months from the date thereof either party institute a suit to set it aside.

PART IV.

Of Ejectment, Relinquishment, [Leases and Under-leases,] Alienation, *and Succession.*

1.—Ejectment.

Ejectment of tenant with right of occupancy

17. No tenant having a right of occupancy, shall be ejected otherwise than in execution of a decree.

Such decree shall not be made, unless

(1) at the date of the decree, a decree against such tenant for an arrear of rent in respect of such land has remained unsatisfied for fifteen days or upwards; or

(2) *in the case of tenants of classes* (2) (3) (4) (5) *of Section* 5, *and those specified in Section* 6, the landlord tenders to the tenant, in addition to any compensation to which he may be entitled under section twenty-four (but subject to deduction in respect of the arrears of rent, if any, payable by him), such compensation as the Court thinks fit, [not less than twelve and not more than twenty, times the amount of the yearly rent payable by him in respect of such land.]

* Mr. Thornton's amendment, concurred in by Mr. Prinsep, Munshi Gopal Dás and Agha Kalb-abid.

* *not less than* 15 *and not more than* 30 *times the amount of yearly profits realizable by him; and the amount of yearly profits shall, for the purposes of this section, be the difference between the maximum rent payable by the tenant according to the provisions of Section* 9 *and the rent payable by tenants not having a right of occupancy for land of a similar description and with similar advantages in the same village or adjacent villages.*

† Mr. Egerton's amendment.

† *not less than twelve, and not more than twenty times the amount of the average annual profits realized during the last five years by such tenant over and above the sum payable to such proprietors.*

Ejectment of tenant without right of occupancy.

18. A tenant not having a right of occupancy may be ejected—

first, if a decree has been obtained against him for arrears of rent or for ejectment; or

second, when he is not holding under an unexpired lease, or an agreement; or a decree of Court, by notice given by the landlord in manner hereinafter mentioned.

Time of ejectment.

19. Notwithstanding anything herein contained, no tenant shall be ejected from the land in his occupation, except between the fifteenth day of April and the fifteenth day of June; *provided that if, while his rent is in arrear, he has failed to cultivate the land for which the arrear is due, in accordance with the terms on which he holds it, he may be ejected therefrom by a decree of Court at any time.*

Notice of Ejectment.

Notice of ejectment.

20. The notice of ejectment shall be written in the vernacular language of the district: it shall specify the lands from which the tenant is to be ejected; and it shall inform him that, if he means to dispute the ejectment, he must institute a suit for that purpose [on or before the fifteenth day of April next] *within thirty days* after the service of the notice, or quit the land on or before [that date] *the fifteenth day of April.*

The Lieutenant Governor of the Punjab shall determine what, for the purposes of this section, shall be deemed to be the vernacular language of each district in the territories under his government,

21. On the landlord's application to the Tahsildar or other officer authorized to serve such notices, the notice shall be served by him on or before the [first day of April,] *fifteenth day of March*, and the landlord shall pay the costs of service.

Service of notice.

The notice shall, if practicable, be served personally on the tenant.

But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at some conspicuous place in the village wherein the land is situate.

22. If the tenant on whom such notice of ejectment has been served fails to institute [on or before the fifteenth day of April next] *within thirty days* after the service, a suit to contest his liability to be ejected, his tenancy of the land in respect of which the notice has been served shall be held to cease on [that date,] *the fifteenth day of April* [unless after the service the landlord has expressly authorized him to continue to occupy the land.]

Cessation of tenancy on failure to contest notice.

Assistance to eject.

23. If no such suit be brought, or if such suit be brought and dismissed, and the landlord require the assistance of the Court to eject any person whose tenancy is alleged to have ceased under the provisions of section twenty-two, he may apply for such assistance; and if the Court be satisfied that notice of ejectment was duly served on such person, it shall, subject to the provisions of section nineteen, give such assistance accordingly.

When assistance to eject may be given by Court.

Nothing done by the Court under this section shall affect the right of any tenant to institute a suit against his landlord on account of illegal ejectment, and to recover compensation for the same.

Growing Crops.

24. Any tenant ejected in accordance with the provisions of this Act, shall be entitled to [receive from the landlord the value of any growing crops or other ungathered products of the earth belonging to such tenant and being on the land at the time of the ejectment:

Compensation to ejected tenant for growing crops.

Provided that if the land has been sown or planted by the tenant after the service on him of the notice mentioned in section twenty, he shall not be so entitled, unless, after such service, the landlord has expressly authorized him to continue to occupy the land.] "*cut and remove any crops or other ungathered products of the soil, which at the time of the ejectment shall be fit for cutting*

and removal, and to receive from the landlord the value of any crops or other ungathered products of the soil that shall not at the time of the ejectment be fit for cutting and removal, and also the value of any immovable property in or upon the land at the time of the ejectment to which the tenant is, by custom or express agreement, entitled. Provided that if the land has been sown or planted, or the immovable property has been placed in or upon the soil by the tenant after the service upon him of the notice mentioned in section 20, or after a decree for his ejectment shall have been made, he shall not be so entitled."

2.—RELINQUISHMENT.

Relinquishment of land by tenant.

25. Every tenant shall be liable to pay the rent payable in respect of the land in his occupation, for the year commencing on the fifteenth day of [April] *June* in any year after the passing of this Act, unless, on or before [that day] *the first day of January preceeding* he gives notice to the landlord of his intention to relinquish such land, and relinquishes it accordingly, *on the fifteenth day of June* or unless the land has been let to any other person by the landlord.

If the tenant relinquishes the land according to his said notice, he shall be discharged from all liability to pay the rent which would otherwise have accrued due in respect of such land after the date of the relinqishment.

If the landlord or his recognized agent refuse to receive such notice, the tenant may apply to the tahsildar or proper officer, and written notice shall thereupon be served by him on such landlord or agent, and the tenant shall pay the costs of service.

The notice shall, if practicable, be served personally on the landlord or agent.

But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at some conspicuous place in the village wherein the land is situate.

[3.—Leases and Under-leases.

Right to let or under-let.

26. Every tenant other than a tenant-at-will may let or under-let the land in his occupation or any part thereof:

Provided that nothing in the former part of this section shall be deemed to affect any agreement on the part of a lessee that he will not or will not without the previous consent of the lessor or his representative, under-let or part with the possession of the said land or any portion thereof.

4.—Alienation.

Right of tenant to alienate.

27. Any tenant having a right of occupancy claimable in accordance with the terms of any of the clauses of section five, may alienate the land in his occupation, or any part thereof.

Every other tenant may alienate the land in his occupation, or any part thereof, with his landlord's previous consent, but not otherwise.

Rights and liabilities of tenant's alienee.

Every person to whom land is alienated under this section, shall be deemed to have the same rights and to be subject to the same liabilties in respect of such land as the tenant making the alienation.]

Succession and Alienation.

26. *In the absence of a special custom to the contrary, the right of occupancy in the case of tenants with a right of occupancy shall descend to the direct lineal male heir or heirs whether by birth or adoption of the deceased occupant, or failing direct lineal male heirs, to his widow on a life tenure.*

27. *The right of occupancy is not permanently transferable, but tenants having a right of occupancy may temporarily provide for the cultivation of their lands, on condition—*

(a.) That they remain responsible to the proprietor for rent and tillage ; and

(b.) That the period for which such temporary provision is made does not exceed two years without the consent of the proprietor.

The provisions of this Section with regard to consent of proprietor and limit of time shall not apply to cases in which a tenant entrusts the land which he occupies to one of his heirs as limited in Section 26.

PART V.

OF COMPENSATION FOR TENANTS' IMPROVEMENTS.

Tenant's right to compensation for improvements.

28. If any tenant, [or, in the case of a tenant with a right of occupancy, the person from whom he has inherited, makes any such improvements on the land in his occupation as are hereinafter mentioned, the rent payable by him or his representative in respect of such land shall not be enhanced, nor shall he or his representative be ejected from the same land, unless and until he or his representative, as the case may be, has received compensation for the money or labour, or both, expended in making such improvements, by him, or the person from whom he has inherited, or whom he represents, within thirty years next before the date of such enhancement or ejectment,] *with the consent of his landlord makes any inprovements in his land, the rent payable by him or by the persons who inherit his rights shall not, for the period of twenty years after the making of such improvements, be enhanced on account of the increased annual letting value of the land resulting from such improvements, nor within the period of twenty years shall he or the persons who inherit his rights be ejected from the same land, unless and until compensation be made for the money or labour or both expended in making such improvements.*

In the case of tenants with a right of occupancy, if the landlord does not within one month from the time when he shall receive notice in writing from the tenant of his intention to commence such improvements serve a notice through the proper officer as described in Section 21 prohibiting such improvements, he shall be taken to have consented to them.

"Improvements" defined.

29. The word "improvements," as used in section twenty-eight, means works by which the annual letting-value of the land has been, and at the time of demanding compensation, continues to be increased, and shall comprise—

1*st*, the construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells; the reclaiming and clearing of waste lands [and jungles];* and other works of a like nature;

* *Mr. Prinsep objects to the words* the reclaming and clearing of waste lands and jungles.

2*nd*, the renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value.

Compensation how made.

30. Such compensation may, at the option of the landlord or his representative, be made—

(1) by payment in money;

(2) by the grant of a beneficial lease of the land by the landlord or his representative to the tenant or his representative; or

(3) partly by payment in money and partly by the grant of such lease as aforesaid.

Provision for difference as to amount or value of compensation.

31. In case of difference as to the amount or value of the compensation tendered, either party may present an application to the Court, on a paper bearing a stamp of eight annas, stating the matter in dispute, and requesting a determination thereof.

Notice of such application shall be served on the other party by the proper officer, and the applicant shall pay the costs of service.

On receiving such application, the Court shall, after taking such evidence as the parties or either of them may adduce, and after making such further enquiry (if any) as it may deem necessary, shall determine (as the case may be) the amount of the payment or the terms of the lease, or both;

Provided that, in determining such amount, the Court shall take into account any assistance given by the landlord, either directly by money, material or labour at the time of making such improvements, or indirectly, by subsequently allowing the tenant to hold at a rate of rent more favourable than the rate at which he

[otherwise] would have held *irrespective of such improvements.*

32. If in any case a landlord tenders to a tenant a lease of the land in his occupation, for a term of not less than [twenty] *fifteen* years from the date of the tender, at the annual rate then paid by the tenant, or at such other annual rent as may be agreed upon, such tender, if accepted by the tenant, shall bar any claim by him or his representative in respect of improvements previously made on such land by the tenant or the person from whom he has inherited.

Tender of lease for twenty years to bar right to claim compensation.

PART VI.

OF PROCEDURE.

[33. Cases cognizable under sections 8, 9, 10, 11, 12, 13, 15, 16, 17, 18 and 23, shall, unless otherwise provided for by any law for the time being in force, be heard in the Revenue Courts.

Revenue Courts to hear claims under certain sections.

The rules relating to civil procedure for the time being in force in the Panjab shall, so far as may be, apply to all suits brought before the Revenue Courts under this Act.

34. For the purposes of this Act, the Revenue Courts shall be the several Courts mentioned in section four of Act No. XIX of 1865 (*the Panjab Courts' Act,* 1865), holding sittings on the Revenue side, other than Courts of Small Causes, and the Chief Court of the Panjab shall be the final Court of appeal.

Revenue Courts.

The provisions of Act No. XIX of 1865 (*to define the jurisdiction of the Courts of Judicature of the Panjab and its dependencies*) and of Act No. XXVII of 1867 (*to empower Deputy Commissioners in the Central Provinces, the Panjab, Oudh and the Jhansi Division to distribute the business in Subordinate Courts*) shall, so far as may be, apply to the Revenue Courts under this Act.

35. The procedure now in force in the Panjab, for the recovery of rent shall, except in so far as it is inconsistent with the provisions of this Act, continue to be in force.]

Saving of procedure for recovery of rent.

33. *Judicial cases cognizable under Sections* 5, 6, 9, 12, 16, 18, 22, 30 *shall, unless otherwise provided for by any Act at the time being in force, and subject to the provisions of Section* 21 *of Act XIX of* 1865, *be heard in the Civil Courts other than Courts of Small Causes, unless such Courts of Small Causes shall have been specially empowered by the Local Government under Section* 6 *of Act XI of* 1865, *to hear such cases; all other applications under the Act, viz., applications made under Sections* 15, 17, 18, 21, 23, 25, *shall be considered as proceedings on the Revenue side, and shall be subject to the ordinary rules of procedure in such cases.*

[36.] 34. All proceedings of officers of Government in making or revising, prior to the passing of this Act, settlements of land revenue shall, so far as such proceedings are consistent with the provisions of this Act, and subject to appeal and revision when an appeal or a revision is provided, be deemed to have been taken in accordance with law.

Confirmation of proceedings of Settlement Officers.

35. *The following stamps shall be employed in proceedings under this Act :—*

1. *Suits for rights of occupancy or for declaration of rights of occupancy under Section 5,* ...	*8 annas.*
2. *By proprietor to rebut presumptive right under Section 6,* ...	*8 annas.*
3. *Suit for enhancement of rent under Section 9,* ...	*Five years' value of the enhancement.*
4. *Suit for abatement by tenant under Section 12,*	*8 annas.*
5. *Application for person to superintend appraisement of division of crop under Section 15,* ...	*8 annas.*
6. *Regular suit to contest appraisement,...* ...	*Ordinary Stamp on value of the amount disputed.*
7. *Ejectment of tenant with or without right of occupancy, Sections 17 and 18,*	*8 annas.*
8. *Application, to serve notice of ejectment under Section 21,*	*8 annas.*
9. *Suit to contest right of ejectment, Section 22* ...	*Ordinary Stamp on 1 year's rent.*
10. *Application for assistance to eject under Section 23,*	*8 annas.*
11. *Application to serve notice on landlord of relinquishment by tenant, Section 25,*	*8 annas.*
12. *Application for adjustment of compensation for improvements, Section 30,*	*8 annas.*

(Sd.) H. S. CUNNINGHAM,
Secy, to the Committee.

True copy,

Asst. Secy. to Government Punjab.

THE DEBATE ON THE PANJAB TENANCY BILL IN THE LEGISLATIVE COUNCIL, ON THE 19TH OCTOBER, 1868.

Abstract of the proceedings of the Council of the Governor General of India, assembled for the purpose of making laws and regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Monday, the 19th October, 1868.

PRESENT :

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.
The Hon'ble G. N. Taylor.
The Hon'ble H. S. Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K.C.S.I.
The Hon'ble Colonel H. W. Norman, C.B.
The Hon'ble F. R. Cockerell.
The Hon'ble Sir George Couper, Bart., C.B.

PANJAB TENANCY BILL.

The Hon'ble Sir R. TEMPLE moved that the final Report of the Select Committee on the Bill to define and amend the Law relating to the tenancy of land in the Panjab, together with the Bill as amended by them, be taken into consideration. He said that the previous history of this Bill would be in the recollection of this Council. For particulars it would suffice to refer to the proceedings of the Council of the 17th January and the 11th April last.

On the last-mentioned date, that is, the 11th April, he obtained leave to refer the Bill to a Select Committee. On the 15th July he presented the preliminary Report of that Committee, together with an amended Draft Bill, and obtained permission to refer the same to the Local Government and to the judicial authorities of the Panjab. On the 8th October he presented the final Report of the Committee with a Bill reconsidered and amended after receipt of replies from the Panjab. And he now moved that this report be taken into consideration with a view to the Bill being passed without amendment, or with such amendment as might to His Excellency the President and to the majority of the Council seem fit.

The report now in the hands of the Council was explicit as to the alterations in, or additions to, the original Bill, as proposed by the Committee. He would therefore not recapitulate these, but would merely state the reasons which have actuated the Committee in respect to some of the more important of their recommendations.

The Council would see that the Bill was divided into seven Chapters, I., Preliminary; II., Rights of Occupancy; III., Rent; IV., Ejectment; V., Relinquishment, leases, alienation, succession; VI., Compensation for tenants' improvements; VII., Procedure.

In the preliminary chapter, the most important point was this: the Committee provided in Section 2 for the strict upholding of all agreements between landlord and tenant, when such should have been separately executed, or else recorded by the Settlement Officer. But then the question arose, what was an agreement recorded by a Settlement Officer? In practice, these agreements being very numerous, were not separately recorded, but were usually entered in a general statement or schedule for each village, which important document was attested item by item by a responsible official, and signed by the parties or their representatives either by signature or mark. Such entries, though not supported by separate documents, were nevertheless truly and really agreements. Still, unless some specification were added, the Committee feared lest there might be doubt hereafter as to whether these entries were agreements within the meaning of the Act.

Therefore they proceeded to lay down, that such entries, when duly attested, should be held to be agreements within the scope of this section. This was necessary to guard the tenant-rights secured by the Settlement records.

In Chapter II., relating to occupancy rights, the 5th and 6th Sections were in some respects, the most important in the whole Bill; for these defined the status of an occupancy-tenant, and these were intended to answer the primary question as to who were the tenants to be deemed to possess rights of occupancy. Now, the original Bill, as prepared by Mr. E. Brandreth, late a Member of this Council, and then in charge of the msasure, described occupancy-tenants mainly as those who had been declared to be such in the Settlement records. When this was first referred to the Panjab authorities in February last, this definition was considered to be not sufficiently complete or accurate. So this particular difinition was proposed to be modified, and certain other definitions were proposed to be added. Now, after the best consideration which the Committee were able to give, they had adopted most of the additional definitions with certain simplifications, but they had retained in its essentials the original definition.

The result was that the Committee had been obliged to classify the occupancy tenants into five categories: the first four categories comprised various superior classes of tenants, and the fifth comprised those who had been so recorded at the Settlement. The fifth, however, was the most important, and really embraced the other four, inasmuch as all the superior classes of tenants were undoubtedly recorded at the Settlement as occupancy-tenants. It would, therefore, suffice to notice briefly the reasons why the validity of the Settlement record had been so carefully upheld in Section 6. This section laid down that a tenant recorded at the Settlement as having a right of occupancy should be presumed to have that right, unless the landlord could rebut that presumption by a regular suit on particular grounds. But then these grounds of rebuttal were strictly limited to circumstances which would prove an actual error in the record. And the practical effect must be that the Settlement record was for the most part to be declared valid by law. Now, what were the grounds for conceding by legislation such validity to the record?

It were needless to dwell on the vast efforts put forth by the Panjab Government to make that record a really good registration of landed tenures, on the liberal expense incurred, on the experience of the officers engaged in supervision, on the scale of establishments allowed, on the years devoted to the enquiry, on the patient frequency of revision so as to ensure ultimate accuracy. With all this, there was no doubt that mistakes occurred, although, on the whole, the record was, as might have been expected, an admirable one. But in respect to tenant-right, there was probably as little mixture of mistake as in any respect; for, in this particular, there was a clear rule to go by. The Settlement Officers understood that, in regard to occupancy-right, they were to look to incidents and circumstances, and quality of tenure, to local custom, and the like. But failing the ascertainment of this, they were, unless there should be reason to the contrary, to regard a tenant who had been in possession twelve years and upwards, as entitled to right of occupancy.

On what reason then was this twelve years' rule founded? In his speech before this Council on 11th April last, he, Sir R. Temple, showed the uncertainty which hung round all rights, superior or inferior, in land, during the period which preceded the introduction of British rule into the Panjab. If the rights of tenants were weak, so were the rights of landlords. If there were indications which justified the confirmation of proprietary right to the proprietors, there was exactly similar justification for confirming the occupancy-right of the better classes of tenants. If the traces of tenant-right were often dubious, or for a time obscured, the same remark applied to the proprietors. The Sikh government used to treat the proprietor and the cultivator much in the same way. Though acknowledging the existence of proprietorship in the abstract, the Sikhs used to look to the occupant—to the man in possession. On him was cast the then heavy fiscal burden. On him devolved the real labour of management. Thus it happened that, under Sikh rule, all good tenants used to be treated much as under-proprietors, and inasmuch as the burden was so severe, such a mode of dealing was considered as convenient by the proprietor. It was, therefore, deemed but just, that, while unprecedented security was afforded to the proprietors, something of the same sort should be secured to the better classes of tenants. Certainly such tenant-right was not opposed to custom: there was no *lex loci* against it; the presumption, indeed, was in favour of such right, according to the circumstances of the Panjab. But local custom, though often traceable, was seldom quite proveable, or was not absolutely ascertainable. If *that* were to be the sole guide, the opinions of no two officers would agree: in no two districts would the result be similar. In one place there would be a tendency to award occupancy-rights to too many, in another place to too few. It was essential that a line should be drawn somewhere by some better criterion. Under such circumstances, it was inevitable that regard should be largely be had to possession and to period of occupancy, which things could certainly be ascertained, and about which there could not be much mistake. Then, if a period of qualifying possession was to be assumed, what was that period to be? Why, the analogy of the older Regulation Provinces was followed, and a period of twelve years was assumed. That was a period well known all over the great Presidency to which the Panjab was annexed; it had been observed in Courts of justice since the earliest period of British rule in Northern India; it had been embodied in all directions to the land revenue authorities; it was understood by the people of the Provinces adjoining the Panjab.

If then the majority of occupancy-tenants had that position awarded to them at the Settlement by reason of twelve years' possession, that reason was a good one : that rule was *per se* a reasonable one. About this fact of possession there was little or no error. According to *this* test at least, nearly all the occupancy-tenants were recorded correctly enough without any mistake in fact whatever. The mistakes alleged against the records chiefly related to custom — a thing which, though existing more or less, was yet peculiarly vague at that time in most parts of the Panjab, and in regard to which it would have been nearly impossible to say what was correctness and what incorrectness.

Moreover, according to the general sense of the people just emerging from troubled, harassed, and even revolutionary times, a period of twelve years' possession *did* give a man some claim. The proprietors not only refrained from objection, not only consented, but were positively willing and often desirous that claims thus supported should be recognized and recorded. They *then* thought it for their best interests that this should be done as tending to organize a staff of tenants who would be the mainstay of the lands in future troubles. They might, indeed, think different by now after the lapse of half a generation, when they saw the value of land rising fast, when they found that the troubles of the past were happily averted, and were not likely to recur under British administration. But a change, real or fancied, in their interest, could not justify the setting aside of agreements deliberately and formally made at that time of Settlement.

Thus it came about that occupancy-rights were recognized as belonging to, or were judicially awarded to many thousands of tenants in the Panjab. The settlement was made before the people, and was thoroughly known to all parties. It was afterwards confirmed by the Government, and that confirmation was publicly notified. Since the completion of the settlement, years had elapsed, in some districts fifteen, in others ten, and so on. Thus there were thousands of tenants who had been at least twelve years in possession before the settlement, who had then been told by authority that they were occupancy-tenants, and who had been ten or fifteen years in possession since ; in all, for nearly one generation. It was too late now to interfere with such tenures, or to deliberate whether the settlement was right or not (though, indeed, there was every reason for supposing that it was right). And these cases, though strong enough, were the comparatively weaker ones. Many cases were far stronger, as the men had more than twelve years' possession, or had something in the shape of custom, if not actually full custom, in their favour.

Various proposals, from first to last, had come before the Committee for re-examining the principles on which the settlement in this branch was made. But, on full consideration, the Committee decided to maintain the substance of Section 6 as it now stood. It was felt that any relaxation would leave the status of thousands of tenants open to dispute or to revision ; and that men should not now be required to defend a position so long ago recognized, so formally guaranteed, so continuously enjoyed. Moreover, even if such enquiry were just (which it really was not), still, after such a lapse of time, it could not be brought to any satisfactory conclusion.

Therefore Section 6 had been framed so as to uphold the title previously recognized at the settlement as belonging to occupancy-ryots, and to narrow within strict bounds the power of rebutting this presumption.

But while pre-existing rights were fully respected in the Bill, care had been taken to avoid the creation of rights not as yet existing, and so it had been provided that, in the future, no tenant should be deemed to acquire occupancy-right by mere lapse of time. This was desirable for the sake of the landlords.

In Chapter III. relating to rent, due provision had been made in Section 11 for the enhancement of the rent, even of occupancy-tenants, on grounds specified, which grounds, if established, would go to prove that the rent might be reasonably enhanced in justice to the landlord. Herein, however, a margin of privilege and advantage had been allowed to the occupancy-tenant, that is to say, he was to pay so much less than the ordinary tenant. Further, this margin had been apportioned to the different classes of occupancy-tenants, the beneficial margin being for some classes as much as 40 and 60 per cent. of the ordinary rent, and for other classes, 15 per cent.

It had been provided, by Section 10, that the rent of no tenant,—occupancy or other,—should (in the absence of agreement) be enhanced without decree of Court. But in the case of tenants-at-will, it must be remembered that the landlord could eject by notice.

The payment of rent in kind had always been known in the Panjab; indeed, the revenue used often, under Native rule, to be paid in this manner. It was possible that applications might be made for commutation of rents in kind to rents in cash, or *vice versa*. After full consideration the Committee had decided by Section 16 that for such commutation, the consent of *both* landlord and tenant should be necessary.

After rent had been enhanced by decree, it was not, Section 13, to be further enhanced for five years, unless there had, in the meantime, been a revision of Settlement—the object being to prevent the tenant being harassed by too frequent enhancements.

Questions of abatement seldom arose in the case of tenants-at-will. But with occupancy-tenants, these questions might arise. Therefore, in Section 14, the grounds on which alone an occupancy-tenant could claim abatement had been specified. This was desirable quite as much for the sake of the landlord as of the tenant.

In Chapter IV. relating to ejectment, it was laid down in Section 19 that an occupancy-tenant could only be ejected by decree of Court. And such an ejectment could only be decreed when either there was an unsatisfied decree for rent, or when compensation was to be tendered by the landlord. In this chapter, indeed the most noticeable part was clause 2 of this section, wherein provision was made for the ejectment even of an occupancy-tenants on payment of compensation. He (Sir R. TEMPLE) had explained, in his speech of the 11th April last, that this provision had been introduced at the special request of the Hon'ble Sir Donald Macleod, the Lieutenant Governor of the Panjab. The grounds on which the policy and justice of this proposal must rest, were fully set forth in His Honor's Minute of the 10th February last. It would suffice to quote one brief passage from that paper:—

"My own opinion is that, while great and permanent dissatisfaction as well as serious obstruction to progress would result from declaring the occupancy

of the ordinary hereditary tenant to be permanent, this principle of granting compensation on withdrawal of land, if prudently applied, would operate most beneficially and be readily accepted by nearly all. No sudden or startling change would be thus introduced. * * *. Seeing also how constant is the tendency in India to excessive sub-division, and how rapid the progress of the country promises to be in population as well as in agricultural, manufacturing, and commercial activity, it appears to me to be a matter of no small moment that the transfer of capital from agricultural to other pursuits in the more densely-peopled parts should be as much as possible facilitated."

The principle was no doubt novel to Indian practice, and there had been difference of opinion in the Committee in regard thereto. It had been retained partly in deference to the views of the Local Government, partly because there was every desire to look to the fair interest of the landlord while securing the rights of the tenant, but mainly because the plan, though new, was fair enough in regard to at least the large majority of occupancy-tenants as they were actually circumstanced in the Panjab. Many were thus recorded at the settlement mainly by reason of a certain period of possession without any special privileges of tenure. That such persons should be bought out by compensation, seemed to be just enough, provided always that the compensation were substantial. And the Committee had taken care to provide an adequate rate of compensation. Even then, however, doubt would arise as to whether the superior classes of occupancy-tenants should be liable to be bought out. Sir D. Macleod would as the Committee understood him) specify certain classes of these tenants as excepted from that liability But on close examination, it had been found difficult to draw a line for this purpose between one class and other. No exception had therefore been proposed. As an amendment was likely to be proposed, or as, at all events, objections were sure to be raised in Council, it seemed sufficient for the moment to state briefly as above the reasons why this clause had been retained.

Tenants without right of occupancy might be ejected by notice from the landlord. It seemed desirable to declare the landlord's power in this respect.

Chapter V. related to relinquishment, leases, alienation and succession. In respect to leases, all tenants, having a right of occupancy, were to be allowed by Section 32 to let and sub-let their lands. But then, by Section 33, the landlord's authority over the sub-lessee had been secured. In respect to alienation, the Committee had carefully considered how far occupancy-tenants should possess this power: the point being one on which custom was not clearly pronounced. It had been decided by Section 34 that the superior classes, described in Section 5, who were almost sub-proprietors, should have this power with merely a reservation of right of pre-emption to the landlord at the market value. All other tenants, including the occupancy-tenants of Section 6, that is, the great majority of occupancy-tenants, must obtain the landlord's consent to proposed alienation. This distinction seemed suitable to the circumstances of the occupancy-tenants in the Panjab, and showed the caution exercised by the Committee in affirming this privilege.

In this Chapter there was an important Section (36) regarding the succession to occupancy-right. That such a right should devolve on direct male lineal descedants, had perhaps remained unquestioned. But the question arose as to whether, failing such heirs, the succession should go to collaterals or not. It had been decided that this should go to male collaterals. A further ques-

tion arose as to whether the condition of residence in the village should be attached to such succession. A condition to this effect had been inserted in the Bill, but there was difference of opinion on this point, and probably objections would be raised in Council. At all events, the observance of the main principle of succession had been secured.

Chapter VI. related to compensation for improvements made by tenants. The provisions were simple, sufficient for the present state of things. If, from canal irrigation or other cause, a regular era of improvement should set in, further legislation would be needed in detail.

By Section 37, in the case of occupancy-tenants, if the tenant himself or the person from whom he had inherited, had made improvements on the land, then his rent was not to be enhanced, nor was he to be ejected till he had received compensation for the money and labor so expended within the previous thirty years. In the case of tenants without right of occupancy, the same rule was to apply to improvements made by the tenant himself, but not necessarily to improvements made by his father or ancestor. The question arose as to whether he should not be entitled to compensation for improvements made by his ancestor. These were held, to be difficulties in making such a rule for tenants-at-will, and so the section stood. There would probably be some difference of opinion on this particular.

It had been provided in Section 41 that this compensation might be afforded by the landlord partly or wholly by a beneficial lease. This of course applied to tenants-at-will. How far a particular lease might be tantamount to the compensation, must be decided by the Court. And Section 40 provided for the determination of disputes of this nature. But if such lease should be for a term of twenty years at the annual rent paid by the tenant at the time of the offer, then such offer, if accepted by the tenant, would bar claim to compensation for improvements.

Consideration had been given as to what should constitute an improvement; and this had been defined in Section 38 to consist of works whereby the letting value of the land had been and continued to be increased. This was necessary, among other things, to guard against compensation being demanded for futile improvements. If further question arose as to the compensation, it must be decided by the Court under Section 40. No reservation had been made of the power of the landlord to take the execution of an improvement out of the hands of the tenant, and to execute it himself. In the case of occupancy-tenants, it seemed doubtful whether such power should be specially reserved to the landlord. In the case of other tenants, the landlord could always reserve such power to himself by agreement. Nor had any allusion been made to the consent of the landlord being necessarily obtained by the tenant. As regarded occupancy-tenants whose right was a species of property, there might be doubt as to the propriety of making such a provision. As regarded other tenants, if the landlord choses he could impose a restriction beforehand; but if he allowed an improvement to be made by a tenant, and had not objected, his virtual consent was inferrible. On the whole, it was good that the tenant should make improvements, and that in doing so, he should be as unfettered as possible. It was also probable that whatever improvements were made in tenant lands would be made by the tenants themselves, the landlords in the Panjab being mostly peasant proprietors fully occupied in working their own glebes.

Chapter VII. merely adapted the procedure to the machinery and constitution of the civil administration of the Panjab.

Such then were the principal considerations relating to this Bill: further details were given in the Committee's report. Endeavour had been made to secure what was fair both to the tenants and to the landlords.

For the protection of tenants, the occupancy status, as defined by the settlement, had been preserved, and the engagements then entered into had been adhered to; the re-opening of questions then formally decided had been barred; the enhancement of rent, save by decree of Court, had been stopped; and even then a beneficial margin had been secured for occupancy classes: ejectment of occupancy classes, save by decree of Court, had been prevented; the right to sub-let had been reserved for all occupancy tenants, and the power of alienation had been proposed for some classes of them; the terms of succession to occupancy-rights had been declared; the grant of compensation on eviction for all improvements made by tenants, whether occupancy-tenants or other, had been carefully provided for.

On the other hand, in the just interest of the landlord, the means had been afforded for rebutting the validity of the settlement in cases where real invalidity was apparent. It had been declared that in future, no tenant should be deemed to acquire right of occupancy by mere lapse of time; the power of enhancing the rent even of occupancy tenants had been affirmed; the grounds on which an occupancy tenant can demand abatement of rent have been limited; the right of ejecting tenants-at-will merely by notice had been declared; the consent of the landlord to alienation even by occupancy-tenants, save those of the superior classes, had been rendered necessary; even in those cases where right of alienation was allowed to the tenant, the right of the landlord to preemption had been reserved; the power of the landlord over the sub-lessees of his tenants had been secured; and lastly a power had been proposed for the landlord of terminating occupancy-rights by the tender of compensation.

SIR R. TEMPLE now submitted this Bill for the consideration of His Excellency the President and of the Council, with some confidence that it would stand the tests supplied even by His Excellency's vast experience. That confidence was based not only on the knowledge he (Sir R. TEMPLE) necessarily had of the people concerned in this measure, having for years pitched his tents among them, but also on the strong support and aid received from his Hon'ble Colleague Mr. Strachey, who had successfully introduced a similar Rent Bill for Oudh, on the thorough examination of principles afforded by their learned Colleague Mr. Maine, and on the care and acumen brought to bear on the drafting of the sections and clauses by the Secretary to the Council, Mr. Whitley Stokes.

The Hon'ble Mr. MAINE said "Sir, there is much in the Bill of my Hon'ble friend on which it will be safe for one who has not passed the greatest part of his life in India to abstain from pronouncing positively, but some questions of principle are raised by it on which I may be entitled to have an opinion. The views which I have formed on them (which happen for the moment not to be popular views), I am the more anxious to state, because, though the subject-matter of the measure has undergone much public discussion, I do not think justice has been done to the side of the

questions involved to which I am compelled to incline. Before, however, I come to the merits of the Bill, it is perhaps proper I should say something on point which was much discussed when the Bill, then in Mr. Brandreth's charge, came before your Excellency's Council. I was not in India at the time, but I see that several Members of the Legislature expressed doubts whether any legislation at all was required, and whether the law, as applied by the Settlement Officers and Civil Courts of the Panjab, should not be suffered to take its course. The facts of the case are now much more clearly known. We have not before us the statistics of the recent Settlement for the whole province, but we have them for one Division. It appears that in the single division of Amritsar 60,000 heads of households were recorded at the first Settlement of the Panjab as entitled to beneficial rights of occupancy. At the recent settlement, 46,000 of these cultivators have been degraded to the status of tenants-at-will. If the same proportions be maintained for the whole province, these numbers denote some hundreds of thousands. It would appear, however, from a Minute of the Chief Court of the Panjab, that, though the Settlement Officers employed the Settlement Regulation of 1822 to produce these formidable results, they did not think fit to follow the prescribed procedure, but have adopted a procedure of their own, unknown to the law. The Chief Court states accordingly that all the settlement operations have effected is a 'superior description of registration.' But that is not all. It seems that the Settlement Officers, from compassion or compunction, did not in all cases degrade the occupancy-tenant at once to a tenancy-at-will. They allowed him a period of grace, during which he was to retain his rights of occupancy. The Chief Court has decided that they had no power to do anything of the kind, and that in such cases the higher status must continue indefinitely. Sir, I observe with regret that, during the sittings of the gentlemen who recently assembled at Murree to consider the amended Bill, an attempt was made to get some words introduced into it reflecting on this decision of the Chief Court. I do not suppose that anything I may say can add authority to the Court's opinion, but still I am bound to state that it appears to me—and what is more important, I believe it appears to your Excellency—that the Chief Court was entirely and obviously in the right, and that the functions of a Settlement Officer are confined to declaring the class of tenure to which the holding of each cultivator belongs. This decision of the Chief Court, however, in Amritsar alone, affects no less than 22,000 cases. In one division, there have been 46,000 rulings on rights to land, of which 22,000 are bad in law. We are threatened with an agrarian revolution, to be immediately followed by an agrarian counter-revolution. In such a state of things, it is probably superfluous for me to argue on the necessity for legislation, and indeed I greatly lament that the course of circumstances has prevented your Excellency's Government from stepping in earlier, and with a high hand forcing a compromise on the official disputants in the Panjab.

And now, Sir, as to the Bill before the Council. I do not mean to oppose it. Indeed, as a Member of the Committee, I have joined unreservedly in the recommendation that it be passed. But the chief ground on which I support it is that affairs in the Panjab have come to such a pass that no arrangement of the matters in dispute is now prudent or politic, except one in the nature of a compromise. The controversy between the officials has extended to the Natives; the fears of one class and the expectations of another have been roused, and it has thus become imperative on the Government of India to avert great political evils by taking a decided course and effecting a settlement intermediate between extreme views. I further refrain from placing any impediment in the way of the Bill, because your Excellency, who certainly cannot be accused of

any fanatical dislike of tenant-right, does not think that the measure as now settled by the Select Committee will inflict intolerable hardship on the large class it will affect. But, Sir, I am bound to say that but for this feeling on your Excellency's part, and but for my conviction that nothing but a compromise of some sort is now admissible, I should have the gravest doubts of the wisdom, fairness, and expediency of the Bill. I should doubt whether it did not go much too far in countenancing proceedings, which seem to me to exhibit characteristics rarely found together in India, and to combine an attack on tenant-right with an attack on the stability of the rights of property. Let me say, however, that I do not think that, properly speaking, the Bill raises the question of the expediency of tenant-right. I can quite understand two opinions being held as to the well-known rule of Act X of 1859, under which there is a perpetual creation of new tenant-rights. I can understand two opinions on the question of tenant-right as it presents itself in Ireland, and as it presented itself three years since in Oudh. But when tenant-right has once existed for a definite period of years, when it has been protected by Government and law, and when it has become vested in specific individuals, it appears to me just as much deserving of respect as any other form of property. All question of its expediency disappears, and the principles of justice and statesmanship no more admit of its violent destruction than they do of the confiscation of copyholds.

Sir, in order to explain the grounds on which I should dispute the equity and common fairness of this Bill, if I thought the question open to any arrangement except one of the sort which it proposes, I must repeat those amazing figures which I read to the Council a few moments ago. At the first Settlement of the Panjab, 60,000 heads of agricultural households were in the single division of Amritsar recorded as having beneficial rights of occupancy in their holdings. At the present Settlement, 46,000 of these occupancy-tenants have been degraded to the position of tenants-at-will, liable to eviction and rack-rent. Sir, the exact economical position of the ryot whose tenure is one of occupancy, I take to be this. He cannot be evicted except on certain conditions, and the profits of the cultivation of the soil (independently of the share those profits taken by the Government as revenue, and independently of the portion which represents the cost of tillage, and of the cultivator's subsistence, and the interest of whatever capital he may have embarked) are divided under varying rules of law between the occupancy-tenant and the landlord, instead of going wholly to the landlord, as in the case of tenant-at-will. This being so, I have always held the opinion attributed to me at a recent sitting of this Council by my Hon'ble friend Mr. Strachey, that, in strictness of language, the occupancy-tenant is co-proprietor with the landlord. Rights over land or any valuable commodity are either rights arising out of contract or proprietary rights. This distribution of rights is considered by the best jurists as exhaustive; if then the occupancy-ryot does not hold (and it is clear he does not hold) under contract, it follows that he has some sort of right of property in the land. There has, therefore, been in the district of Amritsar an attempt at a clear confiscation of property to the extent indicated by 46,000 heads of agricultural households. These 46,000 persons are, it is proposed, to be placed in the same condition as if they had merely contracted for the use of the land. Not only that. A contract may be highly beneficial; but the contract under which these ex-proprietors are to hold, either at once or ultimately, in the least beneficial of all contracts connected with land—a tenancy-at-will and at a rack-rent. If the Settlement Officers of the Panjab are allowed to have their way—and in order to have their way, they have left no stone unturned which an Indian functionary can move—these 46,000 households will be completely depen-

dent on the will and pleasure of others for the liberty of remaining on the land, and will pay for that liberty exactly what those others choose to demand. And taking the whole province, there must be hundreds of thousands of cultivators whose proprietary status has been similarly degarded.

Now let me trace the history of those advantages of tenure of which it is proposed to deprive these unhappy persons. First, what has been the duration of their beneficial enjoyment? Fifteen years is a fair average time to assume for the duration of the first settlement, though in some parts it has lasted considerably longer. It is conceded, and this is the very ground of objection to the first settlement, that the status then recorded corresponded with the actual facts as they existed for at least twelve years preceding. It is, therefore, a beneficial enjoyment and possession of at least a quarter of a century, and probably of a far longer period, which it is now sought to disturb. But that is not all. Sir, I say that for the last fifteen years, these rights have been enjoyed under a distinct protection and guarantee of permanency by the British Government. I commend to the attentive consideration of the Council the earlier part of the valuable Minute of the Chief Court. It is there shown that at the first settlement of the Panjab, the officers employed did not merely, as in older Indian settlements, construct a record which was only a *prima facie* description of the rights therein described. The Panjab officers were invested with judicial powers and the Civil Courts were carefully excluded from interference with their decisions, which, when given on merits, became the decisions of Judges. Of course I do not mean to say that they adjudicated in every case. No court of justice ever adjudicates in more than the minutest fraction of the cases really, though indirectly, affected by its jurisdiction. But it is clear that everybody, landlord or tenant, had an opportunity of coming forward to assert his rights in litigious form, and had power to appeal from decisions which he thought inequitable, and every decision of the Settlement Courts must have indirectly disposed of thousands of cases not actually brought before them. I can scarcely conceive any stronger guarantee given to these rights. A Parliamentary title to property is necessarily somewhat arbitrary; but when a Government sets its courts of justice in action for the affirmation of rights, bringing them to the very doors of claimants and opponents, it gives a moral guarantee of the highest order. These tenants, therefore, Sir, have been in possession for at least 27 years, and for 15 years of that time have enjoyed their rights under the protection not only of the British Government, but of British courts of justice. Let me now ask whether they are an idle and thriftless class, whom it is expedient to improve off the face of the earth. Sir, the evidence to the contrary, which has been laid before me, is truly astonishing. I have been told of parts of the Panjab which were little better than a wilderness before annexation, and which now bloom like a garden, mainly through the industry of these tenants. I have heard of villages voluntarily paying more for the mere rent of irrigation-water than the whole amount of revenue, which, at the time of annexation, it was thought fair to demand from them on the part of the Government. Sir, I do not adduce the proved laboriousness of these cultivators simply by way of appeal to compassion. It constitutes my main answer to the proposition so often occurring in these papers that 'it was the British Government which introduced rights of occupancy into the Panjab.' I do not believe the statement, and I see that the most violent partizans of the theory have now been compelled to relinquish it, for after the most stringent revision of the Amritsar Settlement 15,000 occupancy-tenants remain on the record, which is a conclusive admission of the existence of the tenure before the conquest. But suppose the state-

ment to be true. Why should not the British Government, under the peculiar circumstances of the Panjab, establish rights of occupancy in the tenants whom it found in the province at annexation? Who is it that has created in the Panjab the rent of land and its value for sale or letting, which were practically unknown there under Native rule? It is partly the British Government by the peace and security which it has established—partly the cultivators by their industry. Why should the British Government not give some degree of protection to one large section of the class which, jointly with that Government, has produced all this wounderful prosperity? Why should it, on any principle of justice, be bound to place these tenant-cultivators suddenly at the mercy of any body who can make a claim to those faint, vague, and shifting proprietary rights which by general admission alone existed before the annextion?

Sir, the proposal deliberately made to us by one numerous and energetic section of the Panjab officials is to confiscate, either immediately or after a short interval, the benefical rights of hundred of thousands of households, guaranteed as I have described, vested in the class I have described, and gained at the expense of nobody. But what are we to say of derivative rights which in 15 or 20 years have probably flowed from the original rights in the course of the ordinary transaction of life? As there has always been a doubt whether occupancy-tenures were alienable, they have probably not been parted with in any number, but money-lending is active in every corner of India, and undoubtedly these tenures have been the security, direct or indirect, for considerable advances of money. They may not have been expressly mortgaged, but I find from the papers of the Orissa Famine Commissioners that even in the most difficult times, an occupancy-tenant can obtain an advance when a tenant-at-will can get none. What is to be become of the security for such advances? It is apparently to be destroyed together with the original rights.

Sir, I am bound to say—remembering always that I speak from an English lawyer's point of view, and subject to the reservation implied in my comparative ignorance of the necessary conditions of administration—I am bound to say that, when these proposals first became known to me, they struck me as really monstrous. Yet things *primâ facie* monstrous may turn out simple and natural, but we may at least expect that a strong defence will be made for them. What defence is made here? The chief, it may be said the only, reason assigned for such proposals is that mistakes were made at the first settlement, and that cultivators were recorded as having a right of occupancy, to whom the custom of the country did not attribute any such right. It will be inferred from what I have said that I decline to regard this as in any respect an answer to the tenants' claim. The true question is whether the title of the occupancy-ryots is not of such a character that it ought to prevail, even though it began in mistake,—nay, even though it began, like many of the Talukdari tenures of Oudh, in simple violence. I consider, therefore, the allegation that mistakes were made as raising an immaterial issue. But as many estimable persons do seem to attach some degree of importance to the assertion, I may be permitted to enquire briefly on what foundation it rests. And here, Sir, let me say it was a piece of great good fortune for this Council that my Hon'ble friend, Sir R. Temple, joined us at the particular juncture in the history of this measure at which he took his seat. The impugners of the accuracy of the first settlement were very clamorous and positive; its defenders gave, it seemed to me, but an uncertain sound. But my Hon'ble friend, who had an intimate connexion with this settlement—which, I believe, most of its present critics know only by tradition—who in the Central Provinces has had proceeding under his

eye a settlement conducted on precisely the same principles, was able to assure us that the imputation of carelessness or empirical precipitation was absolutely groundless, and that as much pains were taken as with any other settlement of revenue. Your Excellency is further aware that since it became known in England that these charges were being made, the Government has received letters from gentlemen who were engaged in the settlement in high positions, and who indignantly repudiate the imputations directed against their carefulness and sagacity. I have read the papers most diligently, and I find the only error worth mentioning, which is charged against the original Settlement Officers, is that they took the state of the facts existing during the 12 years previous to annexation as proof of the state of the rights. Now, Sir, with a view to ascertaining in what degree the Settlement Officers were blameable for taking this course, permit me to read a passage from a Minute of the present Lieutenant Governor of the Panjab, who, it must be recollected, is a very high authority on opinions and ideas in purely Native states of society :—' The state of things,' he says, ' existing in the Panjab, for a long series of years preceding annexation, was such as almost to extinguish proprietary rights in land, or at all events to deprive them of mostly all their value. The people, in consequence possessed very indistinct ideas in regard to those rights, so that the best security for a correct ascertainment of the rights and relations of the several classes connected with the land was wanting.' Other authorities who have joined in this controversy have made the same admission even more strongly, so much so that it may almost be inferred from their language that, under Sikh rule, there was no such thing as eviction, and no such thing as the rent of land. Nor is this last statement as incredible as it may seem, for it may well be that the Sikh government took so much from the cultivator in the form of Revenue, that nothing, or next to nothing, was left to him but the means of subsistence and cultivation, and consequently there was nothing, or next to nothing, which could go the landlord in the form of Rent. But what was the problem before the first Settlement Officers? To discover whether tenants were occupancy-tenants or tenants-at-will,—whether they could be evicted, and their rent enhanced at pleasure—and this discovery had to be made in reference to a state of society which included neither eviction nor rent. Really Sir, the customary mode of doing that which was never done—the customary mode of dividing the non-existent—strike one as belonging to that class of questions on which it is best to decline giving a confident opinion. Why then, where the conditions of enquiry were these, why should the Settlement Officers be condemend for preferring one of the best established principles of jurisprudence to an investigation of the ' very indistinct ideas' described by Sir D. Macleod. There is, in a memorandum recently sent up, a dictum of the Settlement Commissioner that ' the recognition of periods as test of rights is the very mischief.' Well, Sir, the recognition of a period of time as the test of a right may in the Panjab be called a mischief, but it is known to jurists as a prescription; and not only are prescriptions common in all systems of jurisprudence, but it so happens that the free use of prescriptions has been selected by jurists as the criterion for distinguishing good and civilized systems of law from those that are bad and barbarous. And the reason is notorious. The accumulated common sense of ages has shown that, even in societies which have very distinct ideas as to property, enquiries into rights which are unfrequently and intermittently exercised are, if carried far back, as nearly as possible worthless.

But, Sir, assuming that the adoption of the twelve year rule led to the recording of some rights which would not have been recorded if a different mode of investigation had been followed, let us see whether the officers engaged in

the recent settlement had any advantage in prosecuting their enquiries over their perdecessors of twenty years since. And first, Sir, I put aside the assumption, which I regret to see occasionally made in the papers, of superior sagacity and care in the present Settlement Officers. There is no evidence for the assumption, which at best is not very graceful; and it is probably safe to take it for granted that at both settlement all parties did their duty to the best of their ability and up to the measure of their lights. But is it not evident, Sir, that from the very nature of the case, the present Settlement Officers were not only not at an advantage, but at a vast disadvantage, as compared with my Hon'ble friend, Sir R. Temple and his colleagues? I must again quote from the Lieutenant Governor the admission that, property having little or no value before the annexation, 'very indistinct ideas' prevailed on the subject of proprietary right. This then was the subject-matter of enquiry,—a mass of 'very indistinct ideas' which were entertained on a particular subject twenty years ago. Then, Sir, the nature of these ideas had to be established by the oral testimony of very ignorant men. It is necessary, Sir, to put this clearly, for some of the papers appear to me to disclose a very curious misconception of the Settlement Officers. They seem to have supposed that what they had to enquire into was the present ideas of the people on the subject of property and tenancy. But that, Sir, cannot be. The true question was whether the first settlement of the Panjab was at variance with local customs, and the business in hand was to take evidence of those customs as they existed before the annexation. And as to these customs, or rather ideas as to customs admitted to have been 'very indistinct,' they had to accept the oral testimony of very ignorant witnesses, and, if possible, to make that testimony prevail against a written record made very shortly after annexation. Well, Sir, it is almost a proverb in India that oral testimony is of very little value. The strongest statement I have seen on the point fell from the eminent Native Judge who sits on the Bench of the High Court at Calcutta. Nor is it necessary to assign moral defects in the witness as the cause of this untrustworthiness. The truth is, Sir, that the power of answering questions intelligently is a fruit and result of the habit of interrogating yourself; and men who do not look into their ideas, who take outward facts as they find them, and remember nothing but their actual experience, cannot answer questions except as to the barest matters of fact. The only effect of interrogating them is either to reduce them to confusion, or to get any answers out of them which the questioner pleases. Now I will show presently what was the character of the questions put to the witnesses; at present I will only say that their testimony was oral, and it related to 'indistinct ideas,' belonging to the past. But surely, Sir, in the Panjab as well as elsewhere, evidence grows weaker in proportion as it grows older; and therefore nécessarily, though the mere fact of its relating to matters of old date, the evidence taken during the recent settlement operations was incalculably weaker than that taken immediately after annexation. But the age of the evidence adduced before them was by no means the heaviest disadvantage with which the present Settlement Officers had to struggle. Surely it must be evident that the motives to false testimony had vastly increased, at least on the part of one class. Property in land which had little or no value before the annexation, has now a very great and distinct value, and the real struggle obviously is, whether in the case of the occupancy-tenants, the new profits shall be divided between them and the landlords, or shall go wholly to the landlords. The position, therefore, of the two parties to this contention in the Settlement Courts was this: on the one side you had very ignorant men, asked very difficult questions as to indistinct ideas of old date. On the other, you had witnesses, a shade better edu-

cated, more throughly aware of the matter in hand, but under the strongest temptation to adapt their testimony to their interests.

Sir, there is much in the detail of the Panjab settlement proceedings which relates to matters which are quite foreign to my experience. There are, however, certain peculiarities in the method of enquiry pursued, on which it is not presumptuous in me to form an opinion, and certainly those peculiarities have not given me a favourable impression of the value of the investigations. I observe, for example, that in a great number of cases, the persons under examination, whether landlords, tenants, or witnesses, were asked whether a particular class had a Right to do a particular thing, and the point was frequently put for decision to the Committees who acted as referees. I do not mean to say that the word right was invariably used, but the questions constantly implied the notion of a Right, or some shade of it. Now, everybody who had paid even a superficial attention to the subject, is aware that there is no more ambiguous term than Right, and no idea less definite. I do not suppose that in the Oriental patois in which these questions were asked, the word is less equivocal than in the cultivated European languages, and yet in Europe it is only the strictest and severest jurists who speak of Rights with accuracy. *Prima facie* when you ask whether a class had rights of a particular kind, you mean legal rights ; but legal rights imply a regular administration of fixed laws, and there was confessedly no such administration under Sikh rule. Yet I find the Settlement Officers enquiring about rights of eviction or enhancement, without explaining (and apparently without being conscious of the need of explaining) whether the rights in question were of the nature of legal rights, or whether moral rights were meant, or whether what was intended was merely the physical power of the stronger to do what he pleased to the weaker. And these difficult and ambiguous questions—questions which in reality sometimes involved highly refined abstractions—questions which I do not hesitate to say that, even if I had been cognizant of the facts, I could not always myself have answered without fuller elucidation of their meaning—were put to ignorant and uneducated men, to men therefore who, like all ignorant men, are capable only of thinking in the concrete and in connection with actual facts, and were put moreover with reference to a state of facts which ceased to exist twenty years ago. Perhaps, Sir, it may be said that the rights about which enquiry was made were customary rights—rights arising under a Custom. But here, so far from having my ideas cleared, I find myself in greater difficulties than ever. For it appears to me that in the papers relating to the recent Panjab settlement, the word 'custom' is used in a sense certainly unknown to jurisprudence, and I believe also to popular usage. A custom is constantly spoken of, as if it were independent of that which is generally, if not universally, considered to be the foundation of a custom. According to the understanding of lawyers, and I should have said according to the understanding of all men, barbarous or civilized, the foundation of a Custom is habitual practice, a series of facts, a succession of instances, from whose constant recurrence a rule is inferred. But the writers of these papers perpetually talk of customs of eviction, of enhancement, or of rack-rent, and in the same breath admit the non-existence of any practice of the kind alleged. Some broadly state that there never was an instance of the customary right being exercised; nearly all allow that its exercise was as rare as possible, nor do they attempt to show that the rare instances of its exercise were not simple acts of violence. Indeed, a good deal of the papers is taken up with conjectural explanations of the reasons why the custom was not acted upon, or, as I should venture to put it, why there was in point of fact no custom at all. A curious illustration of these (to me)

remarkable ideas about customs occurs in the suggestions of the gentlemen who lately assembled at Murree for the revision of the Bill as settled by the Select Committee. The Bill contained, and still contains, a provision allowing the presumption of occupancy right, created by entry in the settlement record, to be rebutted by showing that 'tenants of the same class in the same or adjacent villages have ordinarily been ejected at the will of the landlord.' The so-called Murree Committee proposed to reject this provision, and even the more moderate section proposed to substitute another to the effect that rebuttal should turn upon proof that the entry was opposed to a custom locally recognized and acted upon. Obviously they considered that it would be impossible to show that tenants were ordinarily evicted at will by their landlords. As a mere matter of curiosity, I should really like to see the evidence which would be tendered to a court of justice for the purpose of establishing a custom, in the face of an admission that instances of the exercise of the alleged customary right had never occurred or were extraordinary occurrences. Sir, I must say that, on this ground alone, the claim preferred for the recent settlement to be superior to all former settlements, must be held to fail. I do not pretend to have an exhaustive acquaintance with the voluminous literature of Indian revenue settlements; but I know something of it, and I think I can see that the older investigators of Native customs proceeded on a mode of enquiry which is perfectly intelligible. They enquired for the most part into practices and into facts, not into vague opinions. They inferred a rule from the facts they believed themselves to have discovered, and then they stereotyped it. No doubt they may have made mistakes. They may have generalized too rapidly, may have neglected local exceptions, and may have made a usage universal which was only general or even occasional. But at all events their undertaking was perfectly practicable, whereas I doubt whether the method followed in the recent settlement enquiries was not fatal to any trustworthy result.

That, Sir, however, is not my case. I say that even if these beneficial rights of occupancy were really planted in the Panjab by the British Government, they have grown up and borne fruit under its shelter, and that it is not for its honour or interest to give them up to ruthless devastation. Nor is it solely for the interest of the British Government that they should be protected—it is for the interest of everybody who has a vested right in property, whether moveable or immoveable, and whatever be the form it may take among the innumerable forms which proprietary right assumes in India. There could be no more dangerous precedent than the wholesale obliteration by the Government of vested rights which the Government created fifteen or twenty years ago, merely on the ground that the Government made a mistake. I know, indeed, that it is a point against me that this view does not seem to be taken by the Lieutenant Governor of the Panjab, whose name is not to be mentioned without respect. But I cannot help thinking that Sir Donald Macleod reconciles these proceedings with his sense of justice and expediency by his belief that a system might be devised of buying out the occupancy-tenants on the principle of equitable compensation. Now, Sir, I have always thought that over limited areas of land in India, particularly in the vicinity of great cities, where capital is abundant, and where great cultivation is possible, a system of buying out occupancy-rights for fair value might have much to recommend it, and might solve many embarrassing difficulties. But I am satisfied that, for a whole provinces like the Panjab, such a system would be quite impracticable, and I say this the more confidently because the plan has evidently been suggested by what seems to me an erroneous view of the

functions of the English Copyhold Commissioners. It has been truly said, in the first place, that the office of the Copyhold Commission is to get rid not of the class corresponding to the tenants, but of the class corresponding to the landlords. It is the lord of the manor who is bought out, not the copyholder. Thus it is the few who receive compensation from the many, not the many from the few. Moreover, the compensation proper to be given for the heriots and other manorial dues is calculable with comparative ease, and scarcely amounts in any whole year a very serious aggregate sum. Still, with all these facilities, the Copyhold Commission is notoriously cumbrous and dilatory in its action. A body of functionaries, however, charged with arranging compensation for all the tenants affected by the recent settlement proceedings, would have a herculean task before it. The rights to be paid for hardly admit of estimation, and the mass of those rights is enormous. Although, too, the Panjab has advanced so extraordinarily in prosperity, it may be doubted whether it contains the means for the pecuniary compensation which would be required; and, indeed, I venture to think that if an attempt were made over territory so vast as that comprised in a whole Indian province to buy out occupancy-rights on equitable principles, no system would be possible, except that recently tried in Russia—a system of dividing the land between landlord and tenant, which would probably be infinitely more unpopular with the proprietary class than the present system of dividing the profits.

Sir, I have stated my doubts as to this Bill, as strongly as possible, chiefly because, as I said before, I do not think that side of the question has had fair play. But I do not in the least wish to withdraw from the compromise which the Bill embodies. The article of that compromise which involves the greatest concession on the part of those who agree with me, is the erasure from the settlement record of all the tenants, once registered as having occupancy-rights, who have admitted before the present Settlement Officers that they can be evicted by their landlords. I will not enquire too closely or curiously whether the admission was intelligently given, whether the tenant was or was not thinking of the moral right of his landlord, or of his power as stronger man. Every compromise must involve concession, and if there is any of these rights which it is equitable to destroy, they are those which the owner has in some sense or other disclaimed. One point, and one only, remains for me to notice. It may perhaps appear at first sight a merely legal point, but it is in reality one of the most far-reaching importance. Sir, what is the proper construction to be put on certain provisions of Regulation VII of 1822? On the annexation of a new country to the British Indian Empire, two operations are carried through,—the revenue payable to Government is settled, and a Record of Rights in land, which has hitherto been considered the surest guarantee of the stability of those rights, is framed by the Settlement Officers. When the period for which the revenue has been settled expires, everybody agrees that it can be re-settled according to the increased or diminished profits of the land. But can the Record of Rights be re-cast by the Settlement Officers at new settlements, not on complaint, but officiously and of their own motion? This is the claim of the Panjab Settlement Officers, which I deny on grounds both of reason and of expediency. I admit that the language of the old Regulation is incautious. The truth is, these older enactments were not intended to stand the tests now applied to them; if they were carried out in a sense not intended by their framers, an executive order, which in fact emanated from an authority identical in point of *personnel* with the Legislature, corrected the error. But, I believe, chiefly because the authors of the Regulation were great men and men of strong sense, that they intended nothing preposterous as a periodical,

wholesale, officious revision of Record. Moreover, it is only the 'spirit' of the Regulations which has been extended to the Panjab, and whatever be the exact meaning of the distinction, it is assuredly the letter, and not the spirit, of the Regulation which countenances these late proceedings. For just see what is claimed. The land in India is the foundation of society, and it is asserted that once every ten, fifteen, or twenty years a number of gentlemen, many of whom it is surely not disrespectful to call young gentlemen, may go in and reconstruct the very basis of society. I have sometimes heard and seen the advocacy of tenant-right called socialistic, but what Communist in his wildest dreams ever imagined a wholesale re-adjustment of rights in land once every fifteen years? There is not, moreover, the smallest security for the principles on which such re-adjustment would take place. If an ordinary contingency of Indian life had happened, and certain able and energetic officials had fallen ill during the late settlement, I am not sure that it would have concluded on the principles on which it began; and, for all I know, if these pretensions be allowed, and if the whirligig of Indian opinion goes round as rapidly as it has done in my time, we may have tenant-right introduced universally fifteen years hence, possibly in imitation of Irish legislation which might have occurred in the interval. There is no question, Sir, I suppose, that the extraordinary burst of prosperity which invariably follows the annexation of a new State to British India is chiefly owing to the stability which we give to property—more to that perhaps than to the protection we give to life and limb. If, however, these novel views as to the unlimited supremacy of Government officers over property prevail, I am not sure we shall not by such experiments arrest the progress of the country in civilization even more than did the dispossessed Native ruler by his tyranny and oppression."

The Hon'ble Mr. TAYLOR—"Mr. Maine has so entirely expressed the views which I myself entertain on the question of tenant-right in the Panjab, and as to the necessity for legislation at the present time, that it is quite unnecessary for me to attempt to follow my Hon'ble friend over the same ground. I desire only to explain to the Council very briefly why I concur in the general recommendations of the Select Committee in regard to this Bill, and why I object to the proposed clause in section 19 empowering the landlord by tendering compensation to eject a tenant with a right of occupancy.

I may begin by saying that I regard a tenant with the right of occupancy, acquired by prescription or in the manner which is declared in this Bill to constitute such right in the Panjab, as a co-proprietor of the land in his occupation, who cannot be ousted on any pretence whatever so long as he pays the rent which is properly chargeable thereon. Such a man is not to be confounded with a tenant-at-will, a term which is unknown to the old Regulations. Tenants-at-will are for the most part the servants and labourers of the occupancy peasant-proprietary, usually of a different caste, and whose rights are governed by prescription or custom peculiar to each part of India. It may perhaps be said, as Sir Richard Temple did in fact say in Committee, that my notion of the proper status of an occupancy-ryot is derived from the state of things with which I am familiar in the Southern Presidency, where the ryots are real peasant-proprietors, absolute owners of the land they occupy or cultivate. This opinion of my Hon'ble friend is no doubt true to some extent. I should, indeed, be glad to think that the peasant-proprietary of every part of the vast Bengal Presidency were in a fair way of being raised to the position which is fortunately occupied by the ryots to the south and west of India, whom I regard, not as the pauperised tenantry which they are described to be by persons

very imperfectly informed, but as the true landlord class which the ryotwar system, when properly administered, is calculated to produce.

We have to deal, however, with matters as we find them in the particular province to which our legislation relates, and it has certainly been my wish in common, I feel sure, with that of my colleagues in the Committee, that the principles of the Bill should be as closely as possible adapted to the circumstances known to exist in the Panjab. I believe that this measure, which, after infinite trouble and lengthened discussions with those most intimately acquainted with the wants of the province, has been devised as a compromise between two extreme views, will, in the main, provide a satisfactory settlement of the long pending question?

I hold in my hand a paper on the subject of this Bill written at my request by Mr. Forsyth, the able and experienced Commissioner of the Jalandhar Division, who is distinguished by the moderation of his views on the tenant-right question. He very justly remarks that 'the truth in this, as in most controversies, lies in the mean between two extremes,' and it is this mean which it has been the object of the Bill to hit. After the picture which has been drawn by Mr. Maine of the hapless condition of the many thousands of the occupancy peasantry who have been degraded from their former rights by the proceedings of the Settlement Officers, the Council will hear with satisfaction from one who speaks from personal knowledge, that 'it is a great mistake to suppose the Panjab generally to be in a state of agitation regarding the tenant-right question. Such agitation is confined to the Amritsar and Lahore Divisions, where a general up-heaving or disturbance of the rights of tenants has been made. In many districts the landlords themselves have come forward to propose that their tenants should be protected.' After stating as an undoubted fact that many mistakes were made in the earlier settlements, and describing why this was unavoidably so, Mr. Forsyth goes on to say that as years passed by, 'the people, ignorant and careless, continued in their old ways, taking no heed, and probably unconscious of the erroneous entries. But now, as lapse of time gives a validity to titles otherwise untenable' (and he might have added, as land has increased in value), 'we are frequently assailed by petitions to correct alleged errors.

'For the correction of such errors, some steps were necessary, but Mr. Prinsep went too far in assuming that *all* entries in the records required to be submitted to fresh enquiry.

'It was remarked by a Panjab proprietor that there was no stability in our principle, for twenty years' tenants have been recognised as having certain rights; now we are told Government has changed its policy, and they are to have no rights. Perhaps in another twenty years, another change of policy may take place.

'The proposed Bill provides a sufficient remedy in allowing manifest errors to be brought before a regular tribunal.

Mr. Forsyth then proceeds to comment on several of the details of the Bill, and I must admit that he takes a somewhat lower view of the status of an occupancy-ryot than that which I myself hold. I think, however, that the Council will consider his testimony, as given in the extracts I have quoted, to be very valuable and generally favourable to the measure now under discussion.

There is one fact of which every year's experience and observation only strengthens my conviction, which is that, however much local circum-

stances, habits, customs, and even tenures and interests in land may vary in different parts of the country, the normal condition of the cultivating peasantry in reference to the land is essentially the same in every province of India. Their position is that of hereditary occupiers at customary fixed rates of rent, but without a transferable interest in the soil. This rent is payable either to the Government direct, or to a middle man, a superior zamindar, or proprietor with certain well understood rights and privileges which are recognized by the Government. Now, one of the main objects of this Bill, as it was the object of all similar enactments like the Oudh Bill and the Bengal Act X of 1859, is to confirm and strengthen this tenant-right of occupancy, not by curtailing the proper rights and privileges of the superior landlord, but by giving to the tenant such security of tenure as will enable him with confidence to employ his capital and his labour upon the improvement of his land. What is chiefly wanted in order to effect this, is permanence of assessment and the power of disposing of his property as he pleases. Both these advantages are confirmed to the peasantry-occupant under the present Bill. He remains in undisturbed possession of his land so long as he pays the rent, or at least he will so remain if the amendment of my Hon'ble friend, Mr. Strachey, be adopted, and he may alienate it to whom he pleases after first offering it to his landlord at the market price. But if to these conditions of his tenure you attach the penalty of ejection from the land at the will of the landlord or proprietor, on payment of such compensation calculated on the annual net profits as a Court may think fit, in order, I suppose, that the landlord may put in a relative of his own or a stranger who offers a higher rent, you completely neutralize the benefit intended to be conferred upon the occupancy-tenant; what you give with one hand you take away with the other; you reduce his tenure in fact to that of a mere tenant-at-will, and deprive him of the right of doing what he pleases with his own; you at once depreciate the value of his property, for the occupancy-right *is* a property in the strictest sense of the term, and you destroy the feeling of secure possession which it is so desirable to encourage. I consider this to be a move in the wrong direction. If any one is to be brought out, I would buy out the so-called landlord rather than the tenant. According to my view, the better policy in the interests of all parties is to convert the permanent holder of the land, who is in fact a co-proprietor, into the actual owner of the property on the sole condition of the regular payment of his rent. The hereditary cultivator is the real man of progress; as a rule, it is he and no other who puts his labour and his capital into the land, and it is upon his industry and frugality that all agricultural improvement depends. It is clearly, therefore, to the advantage of the landlord to deal with him as the permanent occupant, and thus give him a direct incentive to improve the property.

The only restriction which by the common law and usage of India has hitherto been imposed upon the co-proprietary or occupancy-right of the hereditary cultivators is the prohibition or disability to alienate without the consent of the Government or the landlord. In the south and west of India, where the ryots hold direct from the Government, this restriction has been removed and the cultivator's interest in the soil has, under our permissive acquiescence, been developed into a transferable right of property. The Bill proposes to confer this right, though qualified by the landlord's right of pre-emption. This is a valuable concession so far as it goes, but I should prefer to give the tenant the power of purchasing out and out this transferable right, once for all, for a fair equivalent. On this subject I beg to refer to a Minute which I wrote several years ago when the question of the relative rights of zamindars and ryots in

Lower Bengal was under discussion. I then said, when referring to several points which affected the condition of landed property under Lord Cornwallis' Permanent Settlement,—' another point is the advantage that would accrue by converting into a saleable property the bare hereditary right of occupancy enjoyed by the ryots of Bengal. The earlier Regulations and Act X of 1859, in providing ejectment for non-payment of rent, do not regard the right of occupancy as a saleable property, and this no doubt is strictly correct. But this restriction upon the transfer or sale of the ryot's rights is worth little or nothing to the zamindar so long as the ryot transmit the occupancy to his heirs and relations without limit; and the removal of this restriction by adding very materially to the value of the land would indirectly benefit both parties. It seems to me, therefore, to be within the province of the Legislature to provide by law for the compulsory enfranchisement of the restricted tenure of the occupancy-ryots by the payment to the zamindar, say, of two and a half times the annual net profit enjoyed by the ryot, which would be about equal to one year's full rent of the land. This of course is a matter for calculation, but as regards lands paying the full rent, the value to the ryot is the surplus after rent and all expenses of tillage are defrayed, which on the average cannot amount to much more than half the rent. 'On payment of this fine once for all, irrespective of the ordinary yearly rent, the ryots would acquire a transferable property in the land occupied by them.' I added that such a measure would have a very beneficial effect upon the present imperfect condition of landed property in Bengal. Probably, however, for the present as regards the Panjab at least, the Bill goes far enough; and if the one flaw to which I have referred be removed, I for one shall be content if its provisions should become law."

The Hon'ble Mr. STRACHEY.—" Sir, I feel that the time has past in which it was posible to hope for a more satisfactory settlement than this Bill affords of the difficulties that have arisen in regard to these questions connected with the tenure of land in the Panjab. But while I admit this, and while I express my concurrence with those who desire that this Bill may now pass into law, I wish to state the opinions which I hold regarding the circumstances that have rendered legislation necessary. This necessity, as my Hon'ble friend, Mr. Maine, has just shown, has been forced upon us by the proceedings which have been lately taken by the officers of the Settlement Department in the Panjab. In my opinion regarding those proceedings, I agree so entirely with everything that Mr. Maine has said, and I think his statement of the facts, and the conclusions which he has drawn from those facts, so complete and so unanswerably true, that I should have felt inclined to remain silent during this part of the discussion on the Bill, did I not feel it to be my duty, as a Member of this Council, not only to assist in repairing by legislation, so far as this may now be practicable, the actual mischief that has been done, and in preventing such mischief for the future; but not to lose this opportunity of publicly declaring my belief that those proceedings have neither been right in principle nor practically expedient, but, on the contrary, that their tendency has been injurious to the most important interests of the country.

The principal questions which have been under discussion are those connected with rights of occupancy in the land, and these are questions on which, as we all know, Englishmen hold views of the most opposite and irreconcilable character.

Notwithstanding these differences, there has been, up to a certain point, a remarkable unanimity in regard to the facts from which our conclusions are

to be drawn. The principal of these facts are those connected with the conditions under which land was ordinarily held in the Panjab before the British conquest.

My Hon'ble friend, Mr. Maine, has read to the Council the opinion of His Honor the Lieutenant Governor of the Panjab, to the effect that for a long series of years before the annexation of the Panjab, proprietary rights in land had become almost extinguished, or had been deprived of nearly all their value. The Financial Commissioner has written to the same effect. He states that, although there were numerous co-existing interests in the soil, 'sixteen years ago there was neither landlord nor tenant in the Panjab, according to our acceptation of those terms.' And in another place he writes as follows :—

"The terms of landlord and tenant, as familiar to us in England, are likely to mislead when applied to the classes we have to deal with in the Panjab, whose relations to each other we are now called upon to determine. If His Honour the Lieutenant Governor will refer to the several settlement reports quoted by Mr. Prinsep, he well observe how very general the testimony is that, on the advent of British rule, the so-called privileged tenants were found occupying a status so similar in all respects to that of proprietors that in some cases it was difficult to distinguish between them. The Sikh Government had not, it is true, by any formal proclamation, such as was issued recently by Lord Canning in Oudh, confiscated the rights of proprietary classes ; but by settled policy, persistently pursued for years, it had effectually confiscated all such rights, and during this time the burden upon the land was so heavy that the obligation was not on the part of the proprietor who gave the land, but on the part of the man who took the land on the condition of meeting the Government demand upon it. * * This and other settlement reports, and the experience of every officer who has enquired into the tenures of the Panjab, will bear me out in saying that, while on the one hand, property in the European sense of the term has been created by the British Government in the Panjab, on the other hand there are to be found in almost every village a class of persons who had been in uninterrupted occupation of their holdings, which they had transmitted like any other heritable property from father to son, and for which either no payment was made to the so-called proprietor, or if payment was made, it was of the nature of the dues for lands of copyhold and customary tenure in England to the lords of manors, rather than of those paid by tenants to proprietors.'

It would be easy to multiply quotations to show that the highest authorities in the Panjab have concurred in these opinions regarding the tenure of land under the Sikh Government.

Under such a condition of things as this, it is clear that neither proprietors nor tenants practically possesved any rights in the land at all. And, indeed, as Mr. Maine has observed, it is idle to talk of rights of property in a state of society in which there was no law, and no administration of justice, and no possibility of enforcing any claim, however equitable it might be. This much seems to me to be certain that, although the cultivator of the soil had no rights capable of being maintained against the will of any one more powerful than himself, there was no part of India in which rights of private property in land were weaker than they were in the Panjab when we took possession of the country. There can hardly be a better sign of this than the fact stated by Mr. Prinsep, and to which Mr. Maine has referred, that in one division, out of 60,000 tenants recorded at the settlement as having rights of occupancy, no less than 25,000 were found to have paid under the Sikh Government no rent to the nominal proprietors.

A great deal has been said in condemnation of the settlements that were made after the annexation of the Panjab. I am far from denying that many mistakes may have been made, and I fully admit that those mistakes ought to be corrected so far as this, after the lapse of so many years, is now possible with-

out, leading to greater hardship and injustice than that for which it is desired to apply a remedy. But notwithstanding such mistakes, I believe, from all the information that I have been able to obtain, that no more careful and better settlements have, all things considered, ever been made in India than those which were made in the Panjab. I think that the reports of those settlements show that they were made in all essential respects on sound principles, and, I will add, on principles far sounder than those in accordance with which it has been proposed to alter them. These settlements were based on the rules which had been laid down and acted upon for many years in the North-Western Provinces. It was the object of the Settlement Officers to ascertain the existing customs, under which land had actually been held, and to secure to every one the advantages which he had actually enjoyed, and to declare judicially that all classes interested in the land should thenceforward hold by right the benefits, which they had previously possessed under a most uncertain tenure.

Such an undertaking was necessarily a most difficult one, and it was impossible that errors should not be committed in recognizing and recording, through the length and breadth of a great country, rights in the land which were often of the obscurest kind, and which were for the first time recognized as rights at all. If, as Mr. Maine has said, it was difficult shortly after the occupation of the Panjab, to ascertain the nature of the advantages which, under the Sikh Government, had been derived from the land by parties possessing conflicting interests, how much more difficult, not to say impossible, must this be now, when so many years have elapsed, when the condition of the country has become absolutely changed, and the people have learned the value of the rights which have been bestowed upon them. I believe that the most careful investigation that can now be made into the condition of things existing in any given estate, before the annexation of the Panjab, must, from the nature of the case, be almost invariably worth much less than the most cursory investigation made under the orders of the Settlement Officer fifteen or twenty years ago. I decline to believe in the superiority of the records of rights that have been lately made in the Panjab over those that were made at the first settlement, under much more favourable circumstances, by officers of not less zeal and ability than the officers of the Settlement Department at the present time.

The truth, I believe, is that this desire to alter the arrangements of the old settlements has had its origin in that strong belief which is ingrained in the minds of so many Englishmen that the rights over the land of the man who happens to be called the landlord, have necessarily something of a peculiar and an almost sacred character. It is seen that the limitation of the demands of the Government upon the land, the protection given to property by our laws, and all the other causes which have made the country tranquil, and rich and prosperous, have given to the land a value which it did not possess before, and that, in fact, a new property in the land has been created. It seems to many Englishmen the plainest justice that this new and valuable property should be deemed to belong to the so-called proprietors of the land, and they think it the extremest injustice that a large proportion of it should, in consequence of the system followed at the first settlement, go, not to the landlords, but to the actual cultivators of the soil.

It seems, Sir, to me that such feelings are in the Panjab altogether out of place. If the settlement proceedings had taken away from the so-called proprietors anything which they had formerly possessed, I should be among

the first to say that they had been unjustly treated, and that they deserved redress. But I totally fail to see that any injustice was committed. I am now speaking generally. I do not deny that injustice may have been done in particular cases, and, as I have already said, where this has happened a remedy should, if possible, be applied. Speaking generally, I see no reason to doubt that the settlement in the Panjab secured to the landlords everything to which they were equitably entitled. Justice would have been done if there had been secured to them no greater profit from the land than that which they had actually enjoyed before, but in fact much more than this was given to them. When it was found, as it was actually found in many thousands of cases, that tenants so-called had been from time immemorial in possession of their holdings, and that they had never paid any rent to the so-called landlords, there seemed to the settlement authorities no reason why the position of such men should be altered, or why, because a man happened to be called by a name which people chose to translate by the English term, proprietor, he should receive, at the expense of other people, advantages which he had never received before.

And it is important to remember that, in making the first settlement in the Panjab, no great political questions were involved, similar to those that have been involved in some other parts of India, and especially in Oude—a country of great and influential landholders. Such landholders in the Panjab are, I believe—and if I am wrong, your Excellency will, I trust, correct me—comparatively speaking, very few in number. The Panjab is and always has been a country of peasant-proprietors, occupying their own small holdings: not a country of great landlords. Under these circumstances, it would have been meaningless to have adopted in the Panjab what has been called an aristocratic policy, such as that adopted by Lord Canning in Oudh, with the avowed object of enlisting in the support of our Government the natural leaders of the people. The settlement in the Panjab was made in accordance with the system which had been adopted for many years in the North-Western Provinces. While I do not believe that the just rights of landlords were set aside, it must be allowed that the main tendency of that system was towards the improvement of the position of the class of peasant-proprietors, and of the tenants having permanent and hereditary rights of occupancy in the land. That system assumed that it was desirable, for the agricultural prosperity of the country, that the people who actually occupy and cultivate the land should have a permanent interest in it; and that so long as they fulfil the obligations under which they hold, they should be protected against arbitrary ejectment, and against unreasonable enhancement of rent. I believe, for my part, that these principles are right, and whether they are universally applicable or not, they were the only principles that were applicable in the Panjab. I believe that there is no country in the world where the notion of absolute property in land is more foreign to the people than it is India; and I think that these voluminous papers which have been laid before the Council, show that there is no part of India in which this idea of absolute property in land had less existence than it had under the Native Government of the Panjab. If the Settlement Officers in the Panjab erred in giving too great an amount of protection to the actual occupiers of the soil, I believe that they at least erred in the right direction. I am satisfied that it is true that the class of small proprietors cultivating their own land, and the class of tenants with a permanent interest in their holdings, are the classes from which almost all real improvement of the land in India is derived, and that, without security of tenure and some limitation of rent, it is vain to expect agricultural progress.

England is the only country in the civilized world in which any other doctrines are seriously held; but when we see what is going on in regard to the position of the occupiers of land in Ireland, it seems hardly possible to doubt that great changes in the tenure of land may not be far distant even in our own country.

I believe that these principles would be true even if Indian landlords were improvers: but in point of fact they are not improvers. Nor does Indian agriculture require for its success, the investment in the land of the money of capitalist landlords. That success depends far more on the careful and unremitting attention to all the operations of husbandry given by men who feel a direct and personal interest in their work, and who know that they will themselves reap the benefits of their own labour. It is the too common custom of Englishmen to doubt the wisdom of any systems which differ from those of their own country. Even in England, where circumstances are altogether peculiar, and where the tenure of land is, to the last degree, exceptional, I believe that the principles which I advocate are generally true. In all other countries, of which I know anything, and especially in India, I believe them to be true without qualification. However this may be, I cannot understand how any one who has seen, as I have seen myself, the admirable results which have been arrived at in many of the civilized countries of Europe by peasant-proprietors and tenants possessing permanent interests in the land, should doubt the future capabilities of a similar system of agriculture in India.

Holding these views I think it matter for much regret that rights, the recognition of which at the settlement was, as I believe, in accordance both with the feelings of the people and with sound policy, should have been so rudely shaken by the proceedings which have made present legislation necessary.

In regard to the absolute illegality of those proceedings, my Hon'ble friend, Mr. Maine has said everything which can be said, and I can add nothing to the well-deserved reprobation which he has given to them. It seems to me truly extraordinary that so monstrous an invasion of the rights of property and of common justice, as that which Mr. Maine has described to us should have taken place in a British province. Whatever may have been the original foundation of these rights, they had been enjoyed uninterruptedly, under the guarantee of our laws, ever since the British conquest, and it might have been supposed that they were as secure as any other rights of property in the land. I cannot profess to think that this Bill affords a complete remedy for the injustice that has been done. But I feel that nothing better can now be hoped for, and therefore, with some exceptions, which I shall find occasion presently to notice, I am prepared to accept it."

His Excellency the COMMANDER-IN-CHIEF said that the Council had now been addressed by four Members of the Committee, and His Excellency the President would bear him out in saying that those Hon'ble Members had shown very clearly that they all belonged to the same school of thought in the matter under consideration. The Hon'ble Mr. Taylor wanted apparently to evict all the landlords, and this perhaps not only in the Panjab, but throughout India. In short, Mr. Taylor would provide for improving the landlord out of his property altogether. The Hon'ble Mr. Maine had, indeed, gone far to shake the value of the report of the Committee, for he had told us that the evidence on which the Committee had come to its conclusions was worthless. The Hon'ble Mr. Strachey, went even beyond Mr. Taylor

in his animosity towards a landlord or proprietor's interest. Quoting his experience of the Continent, he would have us believe that English institutions, so far as regarded the system on which land was held and cultivated, and property generally upheld, to which we were in the habit of attributing the stability of British institutions, were false and wrongful. He would forbid us to contemplate this great exemplar of inviolability of property, and he would have us believe that it was all a fatal mistake. Mr. Strachey referred to the institution of a peasant-proprietary on the continent of Europe as an instance of the greatest political and social benefit; but it was well known that the practical wisdom of that institution was questioned by political economists and social politicians, at least as numerous and authoritative as those by whom it was upheld. HIS EXCELLENCY did not wish to make an opposition speech, but he confessed he saw the gravest cause for apprehending dangerous results from the present measure, unless it were greatly modified. He fully acknowledged the necessity of legislation, and of thus resolving doubts which had assumed a somewhat serious form. It was impossible to listen to the facts brought forward by Mr. Maine, or to look at the figures which appeared in the papers which had been laid before them, without coming to the conclusion that the Government of the Panjab whether impelled by causes beyond its control or influenced by its subordinate officers, had arrived at a point where legislation was absolutely forced upon us in order to prevent the worst evils occurring. When making this assertion, HIS EXCELLENCY begged it might be understood that he imputed blame to no one. He well knew the exigencies or events which at times compelled a Government to move, or to allow a movement, almost against it's will, and as for the subordinate officers, they of course simply acted with the full cognizance of their Government.

His Hon'ble friends, in their anxiety to plead the cause of the occupancy ryots, had treated the Settlement Officers with somewhat scant courtesy. He, the COMMANDER-IN-CHIEF, had the honour of knowing some of these gentlemen; he had read their copious and exhaustive papers which had been circulated from time to time, and he was bound to say that the language used by the Hon'ble members to whom he referred was not such as to encourage officers of Government in a very important part of their duty, viz., not to conceal opinions which they might think it their right to lay before their superiors, which was intimately bound up with the peace and content of the country, and which was the result of the most careful investigation and profound reflection.

If we examined these papers carefully, it would be found that the weight of evidence showed that during the Sikh rule, the right of occupancy recognised in the Bill had no existence whatever, though practically ryots were not evicted owing, doubtless, to their utility to their landlords. The Hon'ble Mr. Maine had dwelt on the disorder and anarchy which prevailed in the Panjab before our annexation of that province, and he proceeded to quote the Lieutenant Governor on his side, and to endeavour to make it appear that Sir Donald Macleod concided in the opinion that, owing to that state of anarchy, there was no possibility of arriving at the conclusion that any right, or shadow of right, as regards the land, existed in the Panjab under the Sikh rule. But what did Sir Donald Macleod really say? He would read the 23rd paragraph of Sir Donald Macleod's Minute of February 10th :—

"It has been urged by some that proprietary rights have acquired reality and value solely by the action of our Government, and that we have the right to dispose, as we think best, of what we have thus created. But I do not believe we can thus deal with rights in land without injustice and imminent danger. If any suppose that proprietary rights in land, however depressed or kept in abeyance, have ceased to be recognized and tenaciously cherished, I would refer them to the third part of Mr. Prinsep's printed papers, where at the eighth and following pages, he goes pretty fully into this question. It was pointed out by Lord Metcalfe many years ago, in a passage which has been often quoted, how, after one or two generations had been driven out of a village in India by violence or oppression, succeeding generations would return on the first available opportunity to resume possession, each family occupying the precise plot vacated by its sires; and we may rest assured that there is nothing in regard to which it is more imperative on a Foreign Government desiring peace, prosperity and permanence, to show the utmost consideration and tenderness than proprietary rights in land."

That was the opinion of the Lieutenant Governor, as was seen in the quotation, and it was sanctioned by the great authority of Lord Metcalfe.

There was another authority even greater than Lord Metcalfe—Mountstuart Elphinstone. He, in one of the earlier chapters of his History, called the village community, which was found everywhere in India, on which Indian Native society was universally based "the indestructible atom of civilization." This being so, were we to be told, because anarchy and violence prevailed for thirty or forty or even, for a hundred years in the Panjab, that no rights of property existed there? That, because we failed on annexation to recognise the exact status of proprietors, it was therefore impossible to ascertain and confirm their rights? He (the COMMANDER-IN-CHIEF) ventured to say that any one with the smallest practical experience of any other part of India would reject with astonishment the proposition. He well recollected that in the Bombay Presidency, certain tenures became the subject of legislation. There was the Mirasi tenure, which no doubt would be held by Mr. Taylor to be of no importance, but which nearly every one else familiar with Southern and Western India, would describe as being considered of the utmost importance by those affected by it, a tenure which especially applied to lands held by absolute hereditary proprietorship under certain conditions. Sir George Clerk was always particularly strong on this point, and absolutely declined to permit the weakening or invasion of such tenures and the rights belonging to them. Then there were the Khots in some of the Mahratta Provinces. They descended from officers who had exercised certain hereditary duties, and for them a law was especially passed by the local legislature. Again, for the neighbourhood of Kattyawar we had legislated for the assistance of hereditary rights, and the perpetuation of the families enjoying them. That country and the districts in which the Mirasidars and Khots to whom he had referred were found had been disturbed by anarchy and civil war quite as much as the Panjab. The evidence in favour of the existence in every part of India of rights aristocratic and territorial never, so far as he knew, used to be questioned till the school of Mr. Bird and Mr. Thomason came to be in the ascendant—a school which, as was well known, had been always hostile to the proprietors, and had been triumphant in the North-Western Provinces. The permanent settlement of Bengal had, on the contrary, been founded on a notion of rights which were now declared to have no existence. We were now in the hands of a school different from that which ruled British India, and which, at the end of the last and during the early part of the present century, laid the foundations of the system existing in Bengal Proper at the present day.

He, Sir WILLIAM MANSFIELD, did not on this occasion offer an opinion either of approval or disapproval of that system. He merely wished to show how different had been the views prevalent in the early part of the century from those which had now become fashionable, and that the notion of the difficulty of ascertaining rights of property was a new one.

He repeated that he did not wish to make an opposition speech. He would therefore now content himself with laying down this proposition,—that while the Legislature determines not to invalidate the rights of the ryot, as amended after the annexation of the Panjab, it ought to take care not to add to those rights. Now, it seemed to him that the present Bill gave occupancy-ryots two most important privileges which were never contemplated by the original framer of the bill, and which had not been recommended by the Lieutenant Governor. First, the Bill in declaring by section 36 that a right of occupancy should devolve on the tenant's male lineal descendants, and failing them on his male collateral relatives, would, HIS EXCELLENCY apprehended, when taken in conjunction with the definitions contained in section 3, be held to confer the power of creating, by adoption, an heir to a right of occupancy which would otherwise have merged for the benefit of the proprietor. This right of adoption had caused so much trouble in dealing with larger affairs that he could not understand why it should be introduced so as to create similar difficulties in smaller but infinitely more numerous transactions. In any case, it was the creation of a new right for the benefit of the tenant and to the disadvantage of the proprietor.

HIS EXCELLENCY spoke with diffidence on a matter relating both to law and to local custom, but surely the provisions of section 34 conferred an enormous and a novel advantage on occupants. If we looked to the Blue Book, we found that Mr. Leslie Saunders was strongly against the existence of any right of alienation such as that section proposed to confer on the ryot. Mr. Saunders said,—

"I believe the rule allowing, where exchange of land has occurred, occupancy still to be considered as continuous occupancy, to be entirely opposed to what has hitherto been considered the custom of the country, for in hundreds of cases I have myself investigated I have invariably found this incident to be admitted by the tenants as one of the main proofs of their not having right of occupancy. Such exchange of fields before annexation may be deemed by Courts, voluntary, because no tenant would have been upheld in such opposition to the will of the land-owner."

Then Mr. Forsyth,—

"I have not given my assent to clause 23 (regarding right of transfer by tenants) because I consider that a commission of some kind should be first appointed to ascertain the general feeling and wants of the people before we create new rights, which tend to perpetuate a double property in the soil."

Then Muhammad Hayat Khan,—

"By the usage of this country, the right of occupancy of tenants does not extend to the power of exchanging their lands. Most owners, fearful lest tenants should claim hereditary tenures at intervals of a few years take away from them lands already in their possession, and give them others in lieu to enable them to make their livelihood."

It would be easy to multiply opinions to the same effect. Here was another, that of Muhammad Sultan Khan,—

"But as rights exist, and justice and custom both demand that they should be accepted on good and sufficient cause being shown, no small matter should be allowed to set the acknowledged right aside. The tenant's right so acquired is simply that of continuous occupancy; to

give them the right of selling and mortgaging at will. Will trench on the right of the proprietor it was never known to exist and is opposed to justice: if allowed, what difference will exist between the tenant and proprietor?"

HIS EXCELLENCY confessed that he entirely sympathized with the writer of the passage last cited. It was impossible to find any difference between a proprietor and an occupancy-tenant with such a power of alienation as the Committee proposed to confer on the latter.

His EXCELLENCY had just been reminded by his Hon'ble friend, Mr. Maine, that the privilege of adoption to which he had referred was founded upon some decision of the Chief Court. That might be, but while we were legislating, no judicial opinion was necessarily binding upon us. It would be observed that Mr. Saunders and Mr. Forsyth raised an important question when they expressed opinions that a broad scheme ought to have been framed for the enfranchisement of the double rights in land. It certainly appeared to him (Sir WILLIAM MANSFIELD) that it was extremely to be regretted that this hint had not received the attention deserved by its great importance. In short it was a matter of something more than regret that the Committee, while dealing with the Bill, had not taken the opportunity of expressly extinguishing the double rights in the same property which the landlord and the ryot were said to possess, according to some one or other of the various modes known to the law of civilized countries. This might have been done so as to ensure the status of the ryot who had been found to possess occupancy rights, to provide a just compensation to the landlord, and to get rid of the complication of interests which now existed, and which the Bill, if passed, would sanction. Hon'ble members were perhaps aware of what the Austrian Government had done in Gallicia, and of what had subsequently been done throughout some of the larger provinces of Russia. Although there was no similarity between British subjects and the serfs of Russia, still when what was called freedom was conferred on the latter, questions arose regarding their relation towards the proprietors and to the land, which were not without a certain analogy to the interests under consideration. When those great countries dealt with such matters, the went to work in a different fashion from that favoured in India. The problem with them was how, while giving freedom to the serfs, the respective rights of property should be separated and preserved from the dangers of endless dispute and litigation. Thus instead of giving double rights in the same piece of land after the manner proposed by the Bill, the Russian Government gave a freehold to the serf and compensation to the landlord. The manner in which this had been worked out both by Austria and Russia was not likely to commend itself to a legislature composed of Englishmen; but the idea lying at the root of the arrangements referred to was nevertheless sound, and as tending to obviate recourse to future litigation, eminently expedient in a popular sense. A similar solution might have been attempted in the Panjab, according to an English plan to which it was probable no objection could have been reasonably taken. Thus, long leases, say for two or even three lives might have been given in favour of all ryots with proved occupancy claims, those claims including what had been created under the original British settlement. This arrangement would have exactly fitted in with that part of the Bill which proposed to give compensation for improvements to out-going tenants.

It was too late now, however, to discuss a plan which at an earlier stage might have adjusted the controversy in a manner compatible with English notions, and which admitted of being made agreeable to the two parties con-

cerned. But an idea, such as that which he had just thrown out, might be brought forward on some future occasion and adopted by the Panjab Government if they were not then trammelled by additions to the rights or privileges which the present Bill proposed to give to the ryot,—additions which had not been contemplated by His Honor the Lieutenant Governor.

His EXCELLENCY would therefore once more say that, while in no way desiring to interfere with the rights of the occupant which had already been secured to him, he viewed, with regret and alarm, the provisions of the Bill which added to the occupant's position, and therefore still more prejudiced the proprietor.

The COMMANDER-IN-CHIEF concluded by stating that he reserved to himself the right of moving any amendment which might appear expedient to him in the sense of the foregoing remarks.

The Hon'ble Sir R. TEMPLE desired to rejoin briefly to various remarks that had fallen from the several Hon'ble members who had addressed the Council.

As regards Mr. Maine's remark that there would probably not be capital enough in the province to enable the proprietors to buy out the occupancy-tenants this expectation might be very correct, but it rather went to show that the measure proposed by the Committee was safe enough.

Again, Mr. Maine had dwelt with great truth and force on the evils which would ensue if the rights recorded at the time of settlement were to be revised every time the settlement itself was revised. But, in fact, the general understanding in the Panjab had been that the rights and titles so recorded were permanent; and that the revision of settlement referred only to the revenue demand which was limited for a period, and might be retained, raised, or lowered after the expiry of that period. But the rights and interests in the land, once settled, were never to be altered afterwards. And this was usually explained to the people.

Further, Mr. Maine had alluded to the provision whereby the presumption of occupancy-right in the record might be rebutted if the tenant had admitted himself subsequently to be only a tenant-at-will. But the Bill provided that such an admission must be *voluntary*. The framers of the Bill felt confidence that hereafter the Courts would take notice of this wording. The admissions which might have been drawn from a tenant on cross-examination by a revising officer, or an admission inferred constructively from the tenor of replies and statements, would not be admissions within the meaning of this Act. The admissions intended by the Act must be voluntary, that is made spontaneously by the tenant of his own accord, *ex proprio motu*.

In respect to Mr. Noble Taylor's remarks to the effect that it would be well if the peasantry of the Panjab could be brought up to the same status as the ryots who were made virtually proprietors by the ryotwari settlement of Southern India, it might be observed that, although the tenants concerned in this Bill were differently situated from the ryots of Madras, yet the great mass of the peasantry in the Panjab were peasent-proprietors with as perfect a tenure and title as could possibly be found anywhere.

As regards the doubts expressed by His Excellency the Commander-in-Chief as to whether occupancy-right had formerly any existence in the Panjab, that was a matter of fact, on which a lengthened statement need not be made after all the discussion which had occurred. The allegation of the supporters of the Bill of course was this, that, despite the want of proper recognition, and despite many drawbacks, something tantamount to such a right did exist, and existed, too, at least as much as proprietary right. Sir William Mansfield had dilated with much truth on the importance of proprietary right, and had asked whether it was not possible to validate that right. No doubt it was possible, and the right had been thoroughly validated at the Panjab settlement. He (Sir R. TEMPLE) had, when a Settlement Officer, been at pains to show that proprietary right in the abstract had been always understood, and at least nominally respected under Sikh rule. Of course, the confirmation which followed at the British settlement was something very superior.

From some of Sir W. Mansfield's remarks, it might perhaps be inferred that the modern school of Indian administrators, who derived their traditions from the great Mr. Thomason, and according to which traditions this Bill had been framed, differed in respect to the maintaining of proprietary right from the original school of Indian statesmen, such as Metcalfe and Mountstuart Elphinstone. But in one most essential particular, these two schools were the same, namely, in the definition and confirmation of peasant proprietorship. No set of officers had done more for the communities of village proprietors in Northern India than the disciples of Mr. Thomason.

It was remarked by Sir W. Mansfield that this Bill introduced two things not contemplated when the settlement of the Panjab was made, namely, the succession of an adopted heir to an occupancy-tenure, and the power of alienating an occupancy-tenure. As regards adoption, if this tenure were recognised at all, it must be allowed to an adopted heir according to Hindu custom. And the rule of adoption was not new, but was set forth in the Panjab Civil Code, which was promulgated at the time when all these settlements were going on. As regards alienation; in some sense it might be looked on as a novelty; but then it was strictly limited in this Bill, and, instead of being extended to all occupancy-tenants, was narrowed to those superior classes of these tenants, whose status almost approached that of sub-proprietors.

It was apparently held by Mr. Strachey that even this Bill, good as it might be, would hardly afford a perfect remedy to the occupancy-tenants for the objectionable revision which had been attempted to be made of their status. However this might be, he (Sir R. TEMPLE) was confident that this Bill did succeed in meting out justice to the tenants, and in securing to them their fair rights.

His Excellency THE PRESIDENT said—" Reserving my judgment on details, I must state in the strongest terms my anxiety that this Bill should become law to-day without alteration in any essential particular. The problem which it attempts to solve has now been under consideration for several years, and has been before this Government for three years. During this period, inquiries have been going on, through a number of districts, by which the rights and the interests of a large portion of the agricultural population have been greatly influenced, and of course their feelings and anxieties have been seriously excited. We cannot stop here. What is wanted is to distinguish and define the relative rights and liabilities of the landholder and the ryot, and to lay

down equitable rules for the guidance of Settlement Officers in deciding the questions which ordinarily arise between different classes of the agricultural population. We have heard a good deal to-day of the relative rights of landlord and tenant. But the facts of the case, in the Panjab at least, are sufficiently simple, though doubtless any one with a little ingenuity could make out a pretty plausible case, especially in favour of a landlord on one side, a tenant on the other, and perhaps a superior proprietor over them both. When the Jalandar Doab was being settled, I remember asking the Hill Rajas, to whom did the land belong? With one voice they answered, 'to us, the Rajas.' Then when I asked the same question of the dominant section of the villagers, they said that the land belonged to a particular class or caste in the village, the Rajputs, Brahmans, or the like. The cultivators, lastly would affirm that while the lands held by the village-proprietors and the waste lands certainly belonged to those parties, the lands in possession of the cultivators also belonged to that class. The real explanation of all this is simply that the land, as a rule, exclusively belonged to no one class. In exceptional cases, the chief of the country or the State might cultivate certain lands by means of the services of serfs or servants, and in that case would take what represented the Government revenue and the profits of cultivation. But as a rule, it may be fairly said that the State took the land-tax, which was usually so heavy as to leave no more than a bare subsistance to the other parties. But whatever was left was divided between the other classes, the proprietor getting nothing or next to nothing from the cultivator beyond the revenue due from the land he occupied. Thus, up to a certain point, both in the Panjab and the North West Provinces, the right of both parties was scarcely discernible until by the moderation of the Government demand, a margin in the shape of rent was created. Even under the British Government, where land was plentiful and cultivators scarce, it was not uncommon for the cultivators to be placed by the proprietors on the same footing as themselves, and to share equally in the profits of the lease which they received of the land assessment from Government.

But to keep to the particular question now before us, the fact is that no doubt proprietary rights in the soil do exist in the Panjab, and do descend; but nevertheless, wherever the Sikh official, whether Nazim or Kardar, in former days, had any interest in disregarding these rights, he did so as a matter of course. Where the cultivator was a good former, he was maintained in his holding, despite the wishes of the proprietor; on the other hand, where the cultivator was idle or unskilful, or where the proprietor represented a strong class, the cultivator went to the wall. Mr. Prinsep knew this very well. He has said that this occurred in the interest of revenue. Truly so. But this does not change the state of the case. The ryot, that is the cultivator, was liable to ejection, but from one circumstance or another was very seldom ejected.

A good deal has been said during the controversy as to the perfunctory mode in which the investigation regarding tenures of land in the Panjab had been made during the past settlement. My learned friend, Mr. Maine has not ill described the state of the case. Every one who has any knowledge on the subject must be aware that there was under Sikh rule neither private deeds, nor public records relating to the ownership of land; and that there was nothing but oral testimony to guide our settlement officers. That was absolutely the fact. Even where written leases of the annual revenue a village had to pay existed, that was no proof of proprietary right. The parties whose names were entered in the document were often strangers who farmed the revenue, and collected the different quotas from the occupiers of the land, or divided the

produce with them. Or what was more usual, the individuals in whose names the lease was made out were the leading elders of the village, some of the co-parcenary body, who accepted the engagement on their own part and that of the brotherhood. There was no detail of how the lands were occupied, except perhaps with the village accountant, and then the nature of the tenure in each case was not given. The Settlement Officer had thus to go into all the numerous and complicated questions arising from this state of things, and to determine them by oral testimony. There was seldom any difficulty as to the respective rights or shares of the different co-sharers. But as to the old tenants, things were far more obscure; and from one cause or the other, though mainly from the excessive pressure of the revenue, they for the most part held their land from father to son without being ever evicted. The exception to this state of things was so rare that as Mr. Maine has remarked it practically formed the rule that the tenant was not evicted.

In Hazara and in Multan the Muhammadan proprietors of the land were ousted by hundreds and thousands by the Sikh government and their Nazims or Governors. When we annexed the Panjab, these lands were held by the cultivators, who were admitted to engage direct with the State for the revenue. In the Jalandhar Doab even the Rajputs and Brahmans had in many cases been ousted by the Jats, and other industrious races, inferior in caste, but superior in frugality and enterprise, and therefore better able to bear the fiscal burthens of the State. No doubt, as Sir Donald Macleod has said, these were cases of great injustice, and should not be taken by us as precedents to follow. Nevertheless they showed that the proprietor's right was not strong, and the inducement to maintain the cultivator, provided he were industrious, was so great, as sometimes to convert him into absolute proprietor, and usually to make his occupying tenure very secure. It was not that the tenant could not be evicted by the proprietor, but that the latter had no inducement to follow this course, and when he wished to do it would often be prevented by the Government official.

While speaking on this subject, I can recall to mind the evidence of a Sikh chief of some mark, now an elderly men, bearing on the light in which the proprietary rights in land were viewed in former times under Sikh rule. This Sirdar is a Jagirdar, and if I recollect right, a small proprietor of land also, and has an intimate acquaintance with such matters. His evidence is the more valuable, as it was given incidentally on a different, though in some degree a cognate, question—that of a claim to a Jagir. This Sirdar only a few months ago made the following remarks in reply to queries put to him in writing by the Panjab Government:—

'The above was all the property of the Kanhye Sikhs, that is to say, it was in their Jagir; they were not proprietors of the soil. *The Sikhs never regarded proprietary right. They always put in or ousted proprietors as they pleased,* for the zamindari rights were nevertheless considered separated from the Jagir rights.'

The fact was that, while the Sikhs in their social relations to each other set a high value on proprietary rights in land, more particularly when these were ancestral, their rulers acted very differently, and cared little who held or who cultivated these lands, provided that the revenue was punctually paid. And this circumstance, added to the fact that there was scarcely any, if any, margin left for rent, after the revenue was paid, is the true explanation how it was that the position of the hereditary cultivator was practically very much on a par with that of the proprietor in the same village. Raja Sahib Dyal,

himself a jagirdar and a proprietor, and formerly, like his father, a large kardar, or collector of revenue, under Sikh rule, in his replies to the queries put to him by the Settlement Officers, stated that the cultivators did not pay more than five per cent. rent to the proprietors of the land which they cultivated, and often nothing at all.

Mr. Prinsep in the different papers which he has written on the subject of the status of the cultivator under Sikh rule, quotes the evidence of different officers, all admitting that the proprietor of the land had the power of eviction. I will read extracts from the statements of two of those officers, both of whom were well acquainted with the subject on which they were writing. The first, Lieutenant Colonel Elphinstone, at one time the District Officer of Futtehpore Gogairah in the Multan Division, and subsequently holding the same position in the Jalandhar District, wrote as follows. Alluding to the condition of things in Futtehpore Gogharah, he said :—

'The distinction between hereditary and non-hereditary cultivators is a creation of our Government. Under the Native rule in this part of the Panjab, it was altogether unknown. Proprietors had the right to eject any tenants whom they disapproved of, however long the latter may have resided on the estate. It is remarkable, therefore, that the cultivators should in some portions of the district, notwithstanding their uncertain tenure, have had the right to sell the 'kasht,' or cultivation of land. Instances of such a right being acknowledged frequently come under the cognizance of the Settlement Courts. This claim to sell the right of cultivation was always founded on the fact of the claimant having been the first plougher of the soil. It was therefore of some importance, when determining the position cultivators were to occupy, to ascertain to whom the claim of 'Buti mar,' or first ploughing of the land belonged. In accordance with instructions issued on this subject by superior authority, all cultivators who could make out their claim to the 'Buti mar' were recognized as hereditary cultivators, a privilege also conferred on those who had cultivated for eight years, if residents in the village, and twelve years if non-residents.

'Land, however, is so abundant and the population so scanty, that I have never found proprietors object to have their cultivators entered in any class the latter might prefer themselves. The privilege of being a 'Maurusi,' or hereditary cultivator, is by no means highly prized, facility of removal being the chief object aimed at. Now the idea is very prevalent among them that, by becoming hereditary cultivators, they may ultimately be made responsible for the Government jama in case of failure on the part of the proprietors, a belief which has probably been strengthened by the fact that Tahsildars, during the summary settlement, often realized from the cultivators themselves. It is not very surprising, therefore, that cases should frequently occur, in which this privilege of becoming hereditary is most strenuously declined, to the despair of the proprietor, who, in the desire of his asamis to become non-hereditary, recognizes a sure indication of their being prepared to leave his village whenever superior temptations shall be held out to them by his neighbours.

'If with our light assessments, proprietors are not only ready but anxious that the holdings of their tenants should descend from father to son, how much more must they have desired this when they were rack-rented by the Sikhs? And if the mere fact of his being the first plougher of the soil entitles a man to sell his tenure, what shall be said of the proposal to reduce to the status of a mere tenant-at-will a man whose ancestor not only reclaimed the soil, but met all the revenue engagements of the proprietor when he was unable to do so himself, and who transmitted it to his descendants as an heritable property, and who, in the assurance of their tenure being a fixed one, have expended capital in building houses and agricultural buildings.'

Mr. Wynyard, the Settlement Officer of Ambala, who was conducting these duties so long ago as 1846, when I was Commissioner of the Jalandhar Doab, made the following remarks in one of his reports :—

'309. Rights of tenants. I have stated above that I have not experienced much difficulty in deciding the amount of rents to be paid by the tenants, but numerous and somewhat difficult cases have arisen turning on the question—who is a tenant and who is a proprietor? As I have before observed, the Sikhs made no distinctions between proprietors as a body and tenants. With

the exception of one or two headmen, or favored individuals, all were treated alike; zamindars and asamis were alike made to pay the high rents demanded of them; nor were matters much mended under our early revenue administration. Now, however, when the khewat and khataon are carefully read out in the village, and thoroughly explained to the people, and when they understand that the zamindar has to pay only two-thirds of the rent, whereas the tenant has to pay the whole; in short when they understand that we acknowledge the difference between proprietors and tenants, the latter persons, who have hitherto been in as bad a position as the zamindars, who have not engaged for the Government revenue, think that they ought now to be placed in an equally good position, and have urgently pressed their claims to be admitted as proprietors. Each case has been tried, either by Panchayat (jury) or on its merits, and separately disposed of; many of the claims are utterly futile, and founded solely on length of possession, which, though it does give a right to continued occupancy without enhancement of rents, gives him no right whatever to a share in those rents.

'I have never failed to keep this distinction clearly before me, and to urge on the officers working with me the great difference which exists between a right to possession of land at a fixed rent and a right to hold lands paying only the share of jama due for those lands. The admission of tenants to the proprietary right is a certain way to weaken the responsibility of the brotherhood.

'310. And yet it is not easy to dismiss the claim of a man who has for years been bearing up against heavy assessments, and paying his share with the proprietary brotherhood. He is entitled to praise and consideration, but he is not entitled to another man's birthright, and I have thought it quite sufficient, if he is not one of the bhaiyachara, to record him as a tenant, and to fix, if he requires it for his protection, a money rental 30 per cent. in excess of the revenue rents.'

These extracts are quoted by Colonel Lake in his letter of the 26th May 1865, to the Secretary of the Government of the Panjab. Mr. Strachey has alluded to passages in this letter. And I will only therefore read a few words in it. In paragraph 20, alluding to Mr. Wynyard's report, Colonel Lake says—

'This and other settlement reports and the experience of every officer who has enquired into the tenures of the Panjab will bear me out in saying that, while on the one hand, property in the European sense of the term has been created by the British Government in the Panjab, on the other hand, there are to be found in almost every village a class of persons who had been in uninterrupted occupation of their holdings, which they had transmitted, like any other heritable property from father to son, and for which either no payment was made to the so-called proprietor, or if payment was made, it was of the nature of the dues of copyhold and customary tenure in England to the lords of manors, rather than of those paid by tenants to proprietors.

Colonel Lake, when he thus wrote, was Financial Commissioner of the Panjab, in which he had served since 1846, and is justly eulogized by the Lieutenant Governor as one of the ablest and best officers in the province. He was employed in making settlements of the land-revenue in that year when the Jalandhar Doab and Kangra District were ceded to the British Govenment by the Sikh Power.

Then again, if I turn to the schedule prepared either by Mr. Prinsep himself or under his direct authority, and which is signed by him, 'showing the relations existing between landlord and tenant as reduced to a set of rules, showing the main classes of tenants, the rights and usages prevailing, and when exceptions are allowed to oppose the usage in each class,' what do I find? I find that there are recorded no fewer than thirty-eight conditions, under which the cultivator is exempted wholly, or in part, from eviction. I will enumerate a few of them.

'(1). Provided occupant has not exercised the powers attending absolute ownership on improvements, such as sinking wells, planting gardens, &c.

'(2). If the person is merely occupying for an absentee or for some proprietor, not in possession of his share or rights, and a claim is made by latter for restitution and intermediate outlay has been incurred, then compensation for losses must be paid before the occupancy of such shareholders can be disturbed.

'(4). Provided the occupancy did not arise out of an order of a Kardar or of a Jagirdar or ruler of the day.

'(5). Or that the land was not made over for cultivation as unto an ordinary tenant, with permissive occupancy by the so-called landowner, who has never previously exercised power of grant, lease, exchange of fields, or eviction.

'(12). Provided that the tenant did not originally reclaim the land from the waste.'

Thus it appears to me clear from this evidence and much more which might be adduced, that various classes of cultivators had beneficial interests in the land in the Panjab under Native rule, and that it is sound policy that we should define and maintain these interests, placing them on a secure basis. It is this which the proposed law now under consideration aims at. It is a fair and wise compromise between conflicting interests of great magnitude, on which the prosperity of the Province largely depends.

Mr. Prinsep is of opinion that as regards the rights and position of tenants in particular, the enquiries of the Settlement Officers were insufficient, and that whenever it would appear that he had been twelve years in possession of his land, he was recorded as an hereditary cultivator with rights of occupancy. But from the quotations I have made, as well as from the settlement papers generally, it is abundantly evident that the Settlement Officers knew what they were doing. If mistakes were made, and I have no doubt that such was the case, the proprietors of land and their representatives, the village headmen, had only themselves to blame. The Native officers who prepared the village papers went into a village or collected the village-accountants and elders, and took down from the former in presence of the latter all the particulars regarding the lands, and classified accordingly the village-measurements. Where there was no dispute, no contest, the returns were filled up at once, and signed by the patwári and lumberdars. Where disputes arose, they were disposed of or referred to superior authority. When the records of a village were completed, a proclamation was, if I recollect right, put up in the village hostelry calling on dissatisfied parties to appear and make their complaints. These settlement operations went on in the same district for months and even for years, during which time appeals were open to the Commissioner of the Division.

As I have before said, errors may have been committed; but they were not so numerous as has been asserted. Proprietors of land in those days were content to give cultivators rights, which they did not consider it worth while to claim, but which they now desire to resume. But, allowing that there were errors committed, I hold with Mr. Maine that, considering that almost in no case had the tenants in whose favor these errors were made, held for less than twelve years, and that in many instances they and their ancestors had been in possession for generations, it would have been better to have maintained what had been done. In such cases the adverse rights of the proprietor had remained dormant so long as practically to have become extinct. Surely at any rate under such circumstances, we are right to require that the burthen of proof that the tenant may be evicted should rest on the proprietor.

His Excellency the Commander-in-Chief has cited in support of his arguments against the tenant the writings of Sir Charles Metcalfe and Mount-

stuart Elphinstone.' There are few names which I hold in greater reverence than those of these two statesmen.' But with deference to His Excellency, I do not think that he quite understood the circumstances under which Sir Charles Metcalfe expressed that celebrated opinion to which reference has so often been made. I am quite sure that it was never intended to bear against the cultivator. Sir Charles Metcalfe was at that time Resident at Dehli, and from long personal experience and considerable knowledge of the landed tenures in the Dehli territory, I can say with confidence that there were no large proprietors there. The lands were held by village communities, by co-parceners forming brotherhoods, descended from common ancestors. Probably ninety-nine out of a hundred of these proprietors were mere yeomen or even peasants. Most of them were Jats in race, holding their lands on tenures closely resembling those of the Panjab. The only difference between these yeomen and those of a large part of the Panjab was one of religion. In the Dehli territory they are generally Hindus: in the Panjab they have become Sikhs and Muhammadans.' So far from an aristocratic state of things existing near Dehli, the social condition of these yeomen is essentially republican. These famous village municipalities which Sir Charles Metcalfe had in mind, when he wrote, were then, as they are now, in a more perfect condition than those in the Panjab, because the Native government had not interferred with them.

Then as regards Mountstuart Elphinstone, no doubt he intended to describe the ancient system which prevailed in India, regarding which his account was accurate. But in Western India, of which he had most knowledge, the village communal system had generally disappeared. In that part of India, we constantly find it asserted that there is no proprietary right among the people at all. There it has often been affirmed, that the land belongs to the State, and I believe that as a rule no third party intervenes between the Government and the cultivator of the soil. No doubt there are here and there petty Mirasi proprietors, but these are quite exceptional. They are the remnants of the great mass of proprietors who have long been swept away. Although no doubt to a great extent the authorities deal with these cultivators as if they were proprietors, allowing them to engage directly for the land-revenue for their several occupancies, nevertheless there seems no common bond of union among those of the same village, and if they refuse to pay the enhanced rent or revenue demanded, or lay claim to the waste lands within the area, in the first case they would be liable to ejectment, and in the other the claim would be denied. On this side of India, everywhere a considerable margin between rent and revenue is allowed, which in most cases accrues to the proprietor; in Western India, as I understand the matter, either the State takes that difference in the shape of increased revenue, or what is probably the case, it is divided between the State and cultivator.

In Western India it is notorious that during the period which elapsed from the time of the wars of Aurangzebe in the Dekkhan and Central India to the close of Píndári and Mahratta depredations, nearly all the proprietary rights in the soil were swept away, and the mass of the people destroyed, so that the land to a great extent lay waste until things were restored by the peaceful influence of British rule.

On this side of India, I refer more especially to the Upper Provinces, whether it was from the innate force and vigour of the mass of the people, and their capacity for uniting in self-defence, things were different: the pro-

prietary rights in the land, though no doubt, often assailed, and even often usurped, were more generally maintained; and when usurped, the village communities kept together, and from time to time asserted their rights. But it is equally certain that these rights were not absolute, and that the Government of the day maintained its right to take as much revenue as it could possibly realise, and to interfere with a high hand even with the landed tenures. It is only under British rule, and mainly from the date of the now much decried Settlements of 1832 and 1833, that a real limitation on the demands of the State has been fixed, and a reasonable margin in the shape of rent has accrued to the proprietors of the land.

In this Bill the Committee have dealt with the matter in a fair and liberal spirit. They have not declared and confirmed the interests of the proprietor to the exclusion of those of the cultivator, nor have they treated the proprietor as if he were a mere incumbrance on the land, the right to which was really vested in the ryot. That is the right way of settling the question. The Government has a right to deal with it. The Government has sacrificed revenue in reducing assessments on land. They have thus created rent where none previously existed. We have a right to apportion the property so created, and if the present Bill is passed, we shall give the proprietors a large share of that property, while leaving to the cultivator a sufficient reward for his labour."

The Motion was put and agreed to.

The Hon'ble Mr. COCKERELL then moved that the whole of section 2, clause 2, be omitted; and

That for section 6, the following be substituted:—

"Every other tenant whose name appears in the records of a regular or revised settlement of land revenue sanctioned by the Local Government, as having a right of occupancy in land which he or the person from whom he has immediately inherited, has continuously occupied from the entry of his name or the name of such person (as the case may be) in such settlement, shall be presumed to have a right of occupancy in the land so occupied, unless, during the progress of any subsequent settlement of the revenue of such land he admits, in the presence of the Officer employed in making such settlement, or before any Officer authorized to attest the entries in the record of the same, that he is liable to be evicted at the will of his landlord, and such admission is recorded by the Officer so employed or authorized,

or unless the landlord establishes in a regular suit that the tenant's right of occupancy was recorded through a mistake of fact or without the consent of the landlord, and contrary to the custom prevailing in the District wherein such land is situate within forty years previous to the institution of such suit."

He said:—"I propose with your Excellency's permission to put before the Council in one motion the first two amendments, of which I have given notice, as both are founded on the same ground of objection to the *Bill*, viz., that it purports to assign to the registration of certain rights in property, a degree of authority in regard to the validity of such rights which I believe to be without precedent in previous legislation.

By the letter of the Secretary to the Government of India in the Foreign Department, dated the 31st March 1849, addressed to the Board of Administration of the Panjab, the Courts of that Province were enjoined to proceed, in the adjudication of matters coming before them, in accordance with the spirit of the Regulations in force in the Bengal Presidency. Chief amongst those Regulations relating to land revenue settlements is Regulation VII. of 1822,

and if the proceedings of the Settlement Officers of the Panjab were governor by any law, they must be deemed to have been guided by the provisions of that enactment. By Section 1, Regulation VII. of 1822, the principal efforts of the Settlement Officers were directed to the object of 'ascertaining, settling, and recording the rights, interests, and properties of all persons and classes occupying or cultivating the land;' and by Section 9 of the same regulation, Collectors and other Settlement Officers were enjoined, whilst making or revising a settlement of land revenue, 'to ascertain and record the fullest possible information in regard to landed tenures, the rights, interests, and privileges of the various classes of the agricultural community.' For this purpose it was added, 'their proceedings shall embrace as accurate a record as possible of all local usages connected with landed tenures, as full as practicable a specification of all persons enjoying the possession and property of the soil, or vested with any heritable or transferable interest in the land or the rents of it, care being taken to distinguish the different modes of possession and property, and the real nature and extent of the interests held, more especially where several persons may hold interests in the same subject-matter of different kinds or degrees.'

By Section 14, Collectors, when making or revising settlements, were required, in cases in which any dispute might be found to exist in regard to the nature of the tenure of any person occupying the soil, to declare in an official proceeding to be incorporated in the rúbakárí of settlement, the nature and extent of the interest actually possessed by such occupant, referring to the denomination heretofore applied to him only as one means of proof in regard to the nature of the interest, but stating at length, with specification of any examination he may take for his satisfaction the grounds of his determination.'

It is clear from these sections, that in disputed cases only, and after full investigation of the evidence offered by both parties, the results of which examination were set forth in an official proceeding, could the Settlement Officer's action as regards the record of the rights of the occupier of the land be deemed to be in the nature of a judicial award. This award which, in the Regulation Provinces, might be set aside in a regular suit if brought within the period fixed by the law of limitation for the time being in regard to such suits, was in the Panjab made final (subject of course to the usual appeal) by the orders of Government, dated 1st September 1849.

Any other record of rights and interests in the land under settlement amounted to no more than a simple registration entitled to a certain degree of weight as evidence *pro tanto* of the subject-matter comprised in it, or (to use the words of the Regulation) admisible only as one means of proof in regard to the interest evidenced by it, but conclusive of the validity of the rights recorded only so far as it could be shown to represent the true facts of the case as regards the existance of the rights recorded at the time of settlement and their prescription by local usage.

I am aware, Sir, that in laying down this position in regard to the state of the law applicable to the record of tenant-rights at the time of settlement, I am stating an apparent contradiction to the statement made by the Hon'ble and learned member opposite (Mr. Maine) on a point on which he is necessarily far more competent to speak authoritatively; but, if I rightly understood the Hon'ble member, his assumption that every record of rights and interests in the land

made at the time of settlement in the Panjab, obtained under the orders of Government in regard to settlement-awards in that Province the force of a decree of Court, was founded not upon his own construction of the law, but upon the supposed opinion of the Chief Court to that effect. I think that my Hon'ble friend was in error in attributing such an expression to the Chief Court. I have before me a copy of the Court's minute on the subject of this Bill, and I will read to the Council an extract therefrom. 'The Court in stating the facts of the case as regards the extent to which the special orders of Government had restricted the jurisdiction of the Civil Courts in regard to the awards of Settlement Officers, cited a passage from the letter of Government addressed to the Board of Administration of the Panjab, which declared that the decisions of the Settlement Officers under their authority should be considered final (subject to the usual revenue appeal) in all cases decided on their merits.'

I submit that it is plain from this extract, that the orders of Government, applied only to cases in which the Settlement Officer made a regular judicial award, and that the Chief Court in citing the passage affirmed no more then that the effect of the Government orders was to make the Settlement Officer's proceedings final and conclusive as to the validity of the record in such cases only.

Rights and interests in the land evidenced by any other settlement record or registration, and it is to such rights and interests that the Bill is chiefly designed to give validity, were liable to be disallowed by the Settlement Officer on a revision of the original settlement, or by the action of Civil Court at any time.

I know that it has been doubted whether, under the Regulation above mentioned, the Settlement Officer has the power of amending the record in regard to the rights and interests of the occupants of the land under settlement; but I can recognize no reasonable grounds for such doubt. The provisions which empower or rather require the Settlement Officer to record the fullest information in regard to such rights and interests, apply as expressly to the time of revision of Settlement as to the time of making the original settlement, and although there is nothing in the section conferring these powers on the Settlement Officer to show that the record of rights in the land prepared at the revision of settlement was to be substituted for and supersede the record of rights framed during the previous ssttlement, yet, from words which occur in section 1 of that Regulation, 'until the same shall have been formally altered; or it shall be shown by the result of a full investigation in a regular suit, that the proceeding or record of the Collector was erroneous or incomplete,' it is to be inferred that such substitution, *i. e.*, informal alteration of the record made otherwise than as the result of a regular suit, was contemplated by the enactment.

I know of no authority, moreover, for the assumption that the Legislature in framing the Regulations relating to the settlement of land-revenue, designed to accord to the settlement record any greater permanency in respect of the rights and interests of the occupant of the land to which it related, than it possessed in regard to the assessment of the Government revenue on such land.

It is necessary to consider here how far the existing law, as regards the status of the settlement record, will be affected by the provisions of the Bill to which my proposed amendments have reference. By the 2nd clause of section 2, all entries in respect of matters comprised in Chapters 3, 4, 5 and 6,* *i. e.*, such matters as enhancement, ejectment, sub-leases, alienation, and compensation of the Bill are, when attested by the proper officer, deemed to be agreements, and, as such, to bar the operation of the Bill in regard to such matters. We have no evidence to show to what extent entries relating to these subjects were made in the records of former settlements; but from the unanimously expressed opinion of the several officers of the Panjab who, under the designation of the Murree Committee, have reported on this Bill, that the clause, if retained, 'would, to a large extent, neutralize the operation of the Act,' it is to be apprehended that such entries in the settlement record were frequent, and that the interests of a large number of persons will be prejudicially affected them.

It seems to me that it is altogether unreasonable to assume the intelligent assent of both the parties affected thereby to the subject of any entry in the settlement record comprehended by this clause; yet it is upon such an assumption only that the retention of the clause can be held to be justifiable.

The fact of a right of occupancy being vested in any tenant having been recorded in any former settlement sanctioned by Government, is, under section 6 of the Bill, to be held to validate such right unless the landlord proves in a regular suit, (1), that other tenants of the same class have, within 30 years previous to the institution of such suit, been *ordinarily* evicted from their holdings; or (2), that the tenant in whose favor the right of occupancy was recorded, has voluntarily admitted in the presence of a Settlement Officer that he is not entitled to the right so recorded.

The result of this provision, as I understand its effect in regard to the landlord's second ground of resistance to the presumption raised by the record in his tenant's favor, will be that, whilst every admission of the incorrectness of his previously recorded status made by the tenant during the revision of settlements made prior to this Bill becoming law, will possibly be upheld by it and the reliability and credibility of such admissions or proofs of the incorrectness of the former settlement records thereby acknowledged, the rectification of errors in other such records in future revisions of settlements will be absolutely barred; for the Settlement Officer must, in future, presume the correctness of the record and the validity of the recorded right of occupancy until the contrary be proved.

From admissions of his not being entitled to a right of occupancy made by the tenant in former revisions of settlements, the landlord can only derive benefit after a successful regular suit; and the insertion of the word 'voluntarily' in the clause which provides this ground, is calculated to suggest a vexatious defence by the tenant and to impose an unreasonable burden of proof on the landlord.

Except, therefore, in the cases in which admission of the incorrectness of the former record have been made during the revision of settlements in the Amritsar Division, and which the landlord may succeed in substantiating in a regular suit, he is reduced to the single ground of resisting the status accorded to the tenant by the record by proof in a regular suit that other tenants of the same class have been ordinarily evicted within thirty years previous to the institution of such suit.

This last ground of resistance left to the landlord is in no small degree vitiated by the use of the term 'ordinarily,' which is so indefinite as necessarily to raise a question most difficult to determine, and which is certain to be variously interpreted, viz., what number of evictions must be proved to establish a fair rebuttal of the presumption in the tenant's favour?

Moreover the period within which such evictions must have been effected, fixed by the Bill, is calculated to make the clause in all probability almost, if not wholly, inoperative; for, it is generally admitted that, since the establishment of British rule in the Panjab, ejectments of tenants have not occurred, and that for several years previous to the annexation, the state of the country was so disturbed, and the difficulty of procuring cultivators was so great, that their ejectment in any circumstances at that time was hardly to be expected.

Practically, therefore, the Bill sets up an almost absolute right of occupancy in favour of the tenant to whom such right has been assigned in the record of former settlements, save in the cases in which, at the time of the revision of those settlements, the right has been disowned by the tenant.

Is such legislation justified by the circumstances of the case as regards these records of former settlements so far as they are known? For, what are the circumstances of the case? Why, in the course of the revision of those settlements which has been going on for the last five years, in the Amritsar Division alone, out of about 60,000 cultivators who were recorded at the former settlement as having a right of occupancy, no less than 19,000 (or nearly one-third of the whole number so recorded), admitted that they were mere tenants-at-will. I put out of account altogether the large additional number of disputed cases in which the revising Settlement Officers held that the status of a right of occupancy had been wrongly conferred in the former settlement, and I submit that the undisputed results of the revision of the former record of tenant rights, so far as it has gone, prove clearly, if other evidence was wanting, that numerous mistakes were made in the preparation of the former settlement records.

The law under which those records were prepared required that they should contain a faithful representation of the rights and interests in land, as they existed at the time of settlement, it is abundantly evident, however, from the reports of the Settlement Officers written at the time of the former settlements, that the rights of occupancy then recorded were created by the settlements, for the most part, on the purely arbitrary test of an actual occupancy for twelve years or upwards, and that, previous to that settlement, such rights had no recognizedexistence.

In proof of this, I will send to the Council extracts from those reports, and first I will quote the statement of the Hon'ble Mover of this Bill, who conducted the first settlement of the Jalandhar district. In paragraph 207 of his report of that settlement, Mr. Temple stated that '*the rights of occupancy apart from proprietary rights, were unknown.* *** The Government may have partially recognized it, but the people did not; however long a patch of land may have been occupied, *'the proprietor would at his pleasure resume it without ceremony, and the cultivator would resign it without demur.'* Again, in paragraph 298,—' it was not attempted to fix any terms of occupancy which should *perse* entitle a cultivator to rank as hereditary, but it will be found that cultivators who have been in possession of the same field for 13 years and

upwards, *have at the present settlement generally been vested with hereditary rights;*' and in paragraph 302,—"*the distinction between hereditary and non-hereditary cultivator is not indigenous to this part of the country. It has been introduced by the settlement.*'

Mr. Davies, in his settlement report, on the Gurdaspur district, paragraph 25, stated that,—'a right of heritable occupancy has been conceded to a large proportion of the cultivators of the tahsil: the title is commonly founded, on a prescription from 12 to 20 years.'

In Mr. Cust's report of the settlement of Shakargarh, a pargana of the Gurdaspur district, it is stated (paragraph 36),—'the status of the hereditary cultivators, or tenants with right of occupancy, *was created in this pargana as elsewhere by the Settlement Officer*; it was defined to be cultivation of one plot for 12 years uninterruptedly accompanied by residence within the village, or uninterrupted cultivation of 20 years without residence.' In his report on the settlement of the Lahore, district, Mr. R. Egerton, the present Financial Commissioner of the Panjab, wrote (Paragraph 15),—'the rights of the hereditary cultivators *have been entirely created under our rule.* Under the Sikhs, the proprietor had *always the right of ousting a tenant whenever he chose.*'

It appears to me, Sir, that stronger evidence than is afforded by the foregoing extracts from the reports on the former settlements of land revenue in the Panjab, could hardly be adduced to show that the records of those settlements so far from representing the rights and interest, in land, as then existing under the prescription of local usage, were as regards those rights and interests, framed on an arbitrary principles initiated by the Settlement Officer at the time of settlement, and that the rights of occupancy then recorded were distinctly opposed to the previously existing custom which governed the relations subsisting between landlord and tenant on the question of the permanency of the tenure under which the latter occupied his land.

Officers employed in conducting the first settlements of the Panjab, recorded the fact, as the result of their enquiries, that under the Sikh rule evictions of tenants by the landlords were commonly allowed and made, and this statement was recorded, it should be remembered, at a time when the question now at issue excited no interest whatever, and men's minds consequently were necessarily free from any possible bias in the matter.

The principle on which rights of occupancy were allowed for the record of former settlement, which rights, as I have already shown, are almost absolutely validated by the provisions of this Bill, *i. e.*, the fact of a continuous occupancy for twelve years or any other arbitrarily fixed period is wholly consisten with section 9 of the Bill; and this inconsistency deprives the proposed legislation of any support from what might otherwise have been cited as the analogous conditions on which rights of occupancy were conferred on the tenant by Act X of 1859.

Lastly, I have to draw the attention of the Council to the manifestly partial spirit of the provisions of this Bill towards the interests of the tenant as evidenced by section 8. After exhausting in the previous category of tenants having a right of occupancy, every known ground on which a shred of a claim on the part of tenant to maintain a right of occupancy against landlord could be

supposed to exist, the Bill goes on to provide in this section that if the tenant can set up any other ground of claim, he shall not be precluded from doing so. The benefit of a recognized local custom ignored when the landlord's interests were at stake, is thus conceded to the tenant.

No doubt it will be said that this provision was introduced at the suggestion of the Committee of officers of the Panjab, assembled at Murree for the purpose of considering and reporting on this Bill; the fact is, however, that the Murree Committee proposed this section merely as a rider to a section which they desired to substitute for the existing section 6, and which, if addopted, would have secured in the manner contemplated by my amendment the recognition of local custom as a ground of rebutting the presumption raised in the tenant's favor by the settlement record. That Committee in their proposals where manifestly actuated by a sincere desire to do justice to both parties. The majority of the Committee readily accepted so much of the proposition as would subserve the interests of the tenant, but rejected its counterpoise in favor of the landlord.

I cannot conclude these remarks without expressing the regret and surprise with which I heard the proceedings of the revising Settlement Officers characterized by an Hon'ble member opposite (Mr. Strachey) as 'monstrously illegal.' I have already stated my own conclusions as to the authority of the existing law for the alteration of the record of tenant-rights by the Settlement Officer when engaged in revising the settlement. I will now read to the Council an extract from the Minute of the Chief Court of the Panjab, which has already been cited by Mr. Maine as authoritative in laying down the state of the existing law which regulates the proceedings of the Settlement Courts of that Province.

In paragraph 18 of its Minute, the Court remarks as follows:—

'Now it cannot be doubted that Mr. Prinsep had full warrant of law for correcting errors and omissions in the records of the previous settlements, but the question has arisen as to the legal force and effect of his proceedings when taken and recorded.'

That is the opinion, Sir, of the highest Court of the province in which the Settlement Commissioner was employed as to the perfect legality of his taking cognizance of the errors of the record framed at the former settlement. I submit, therefore, that the imputation which has been made in this Council on the character of the Settlement Officers' proceedings was not warranted by the facts of the case; I agree with His Excellency the Commander-in-Chief in the remarks which fell from him on this subject. I hold that in any case such remarks in this Council are ill-advised as calculated to harass zealous and conscientious public servants in the faithful discharge of their duties. Moreover in the present case, it cannot be unknown to Hon'ble members, who have persued the printed papers on the subject of this Bill, that the Settlement Commissioner at the very outset of his proceedings, earnestly solicited an expression of the views of Government in regard to the question of amendment of the settlement record, and that he thereafter continually pressed the subject upon the attention of Government. The Lieutenant Governor of the Panjab in his Minute has expressly and emphatically accepted the responsibility of the Settlement Commissioner's proceedings, even if those proceedings had been unauthorized by the existing law, any personal censure on that officers could not have been justified.

It has been charged against the Settlement Officers that they have fomented public agitation on the subject of rights of occupancy, which subject

had no real or deeply-felt interest to the people when left to themselves. That this imputation is ill-founded I hold to be conclusively proved by the following extract from the Lieutenant Governor's Minute, dated 10th February 1868:--

'Para. 15. * * * * For *many years past*, the conviction which has urged Mr. Prinsep so persistently and warmly to urge the necessity for a change—the conviction, viz., that the existing state of things was rapidly undermining all good feeling between the most important classes of the agricultural population—has strongly impressed itself on those of our officers who are most careful to enquire into the feelings of those about them * * *.'

The Hon'ble MR. MAINE said that it was not he who had spoken of the "monstrous ilegality" of the proceedings of the Settlement Offices. He did not deny that those proceedings had some colour of legality. His objection was that the Settlement Officers had not observed the procedure prescribed by law, and had revised the settlement record not upon complaint, but officiously and of their own motion. As to the observations of his Hon'ble friend (Mr. Cockerell) on the effect of investing the first Settlement Officers with judicial powers, Mr. Cockerell had apparently taken for a legal argument what was intended to be, an argument of another kind. Mr. MAINE never intended to say that a mere entry on the first settlement record constituted the matter described *res judicata*. It was plain upon the orders of Government that no such effect was intended. But Mr. MAINE had dwelt on the moral guarantee implied in bringing courts of justice to the doors of the people at the moment when rights were under investigation, and opening those courts for the establishment or rebuttal of occupancy-rights in disputed cases. He had meant to say that every decision of those courts must have disposed of hundreds of cases on all forms with the point decided. It was not necessary for him to discuss his Hon'ble friend's amendment at any length, since he had unwittingly anticipated what appeared to him the proper reply. On the operative part of the amendment, he had however, to say, first, that he did not completely understand what was meant by making "mistake of fact", a ground of rebuttal. He could only say generally that he objected to opening mistakes of fact after such a lapse of time. The next words introduced by his Hon'ble friend were apparently intended to obviate the difficulty felt by Mr. Cockerell as to the effect of the word "voluntarily" in section 6 of the Bill in casting the burden of proof on the landlord. Mr. MAINE held on the principle that no one can be forced to prove that which is wholly beyond the range of his knowledge, it would be for the tenant to show that the admission which he was proved to have made was not voluntarily given. To the last word proposed by his Hon'ble friend Mr. MAINE would not have objected but for the ideas which appeared to be entertained by the Panjab Settlement Officers as to the nature of a custom; *prima facie* it was quite right and proper that the presumption created by the entry on the record should be rebutable by establishing a custom of eviction. But when Mr. MAINE found those officers coupling the assertion of the existence of a custom with the admission that there was no known instance of the exercise of the customary right, he could not help thinking that the introduction of the term would be dangerous. It was safer to require the landlord, as the Bill required him, to prove the practice which every court of justice would compel him, to prove as the foundation of a custom in the legal sense.

His Excellency the COMMANDER-IN-CHIEF said:—"With reference to Mr. Cockerell's final remarks, I should like to put a question to my Hon'ble friend Sir Richard Temple. During the debate on these amendments, I have been advised that there was a condition in the former settlement to the effect that tenants thereby declared to have a right of occupancy were only to have that

right subject to alteration or revision if, on further examination, any such change appeared to be required. If this were so, a great deal turned upon an important point. It was said that the decisions of the officers on the original Panjab settlement assume the weight of judicial decisions. But if my information be correct, the greatest doubt must be thrown on the inferences drawn by my Hon'ble friends, Mr. Maine and Mr. Strachey. When the conditions of section 7 of the Regulation of 1822 are considered, it appears that they hang strangely together with the information I have received, and almost prove the latter to be free from error. What I want to know is whether those tenants were warned of the possible alterability of their tenures, and if so, whether this were done in the pursuance of any rules for the guidance of the Settlement Officers? Had I had more time, it would have been possible for me to have ascertained by reference to the rules under which the Settlement Officers had acted. But it would be recollected that the revised Bill and report had only been for four days in the hands of Hon'ble members. If the information is declared to be incorrect on which my qestion is based, I should like to be favoured with documentary authority."

The Hon'ble Sir R. Temple :—" I have no hesitation in denying positively that there was any such condition in the former settlement. There was such a practice in the Central Provinces, but it never existed in the Panjab."

His Excellency the Commander-in-Chief asked Sir Richard Temple to produce any books in support of his denial, observing that a great deal of doubt had been thrown to-day on the value of oral evidence.

The Hon'ble Mr. Maine observed that anonymous information was also open to doubt. On ordinary principles some *prima facie* case should be made out before Sir R. Temple was called upon to prove a negative.

After some further conversation, the President interposed and the debate proceeded.

The Hon'ble Sir R. Temple, in opposing Mr. Cockerell's amendment, said that any such modification of the terms of the Bill would open a door to the revision and reconsideration of the status of the mass of occupancy-tenants in the Panjab; it would admit of the proprietor contesting the title of every such tenant, and would tend to throw the burden of proof on the tenant. All this, for the reasons repeatedly given, would be most objectionable.

Most of the points in Mr. Cockerell's argument had already been answered, and further reply in detail would not be needed. The main point was Mr. Cockerell's allegation that, as regards occupancy status, the settlement record had been made in mistake of fact and in opposition to custom. Now, the main fact on which the record had, in this respect, been founded, namely, twelve years' possession, was not mistaken at all, but was undeniably correct. And as to custom, no such thing in the sense intended, namely, a specific and demonstrable custom, existed in the Panjab with respect to occupancy-right.

Then Mr. Cockerell had implied that the settlement record, excepting only the separate judicial awards, was simply a registration. But in fact it was much more than a registration; it conveyed titles to tenures and titles to land and to the interests bound up therewith. If any doubt had been cast on its validity regarding tenant-right, that doubt would be removed by the Bill.

It seemed to be supposed by Mr. Cockerell that the Regulations of 1822 and of 1833 were the only rules under which the Pánjab settlements had been made. But, in fact, there were other rules; notably the directions to Settlement Officers and the circulars of the Board of Administration, to which indeed observance was mainly paid by the Settlement Officers.

A quotation had been made by Mr. Cockerell to show that tenant-right had been "created" at the settlement. The force of this entirely depended on the meaning of "created." If it meant something not before existing, then occupancy-right had not been created, for occupancy had largely existed before. If it meant something precariously existing but now confirmed, then, in that special sense, occupancy-right might be said to have been created. But in that sense, proprietary right had also been created. In, short, occupancy-right had been no more created than proprietary right.

Again, Mr. Cockerell had quoted his (Sir R. TEMPLE's) settlement report of 1850-51 to show the *non*-existence of occupancy-right. Hereon it would suffice to refer the Council to his (Sir R. TEMPLE's) speech of the 11th April, in which the very passages quoted by Mr. Cockerell had been quoted by Sir R. TEMPLE himself. But at the same time other passages were quoted by Sir R. TEMPLE, which showed that, though in some respects tenant-right was not acknowledged, yet that in reality it existed. It would not do to quote these passages singly; they must be taken together, so that their collective sense might be gathered. But was there anything inconsistent between this Bill and the settlement made by Sir R. TEMPLE in 1850-51? Quite the contrary; there was perfect consistency. For in truth this Bill confirmed by legislation exactly what was done at that settlement.

As to the Lieutenant Governor's opinion quoted by Mr. Cockerell, to the effect that the recognition of proprietary right engendered ill-feeling among the proprietors, this must allude to the circumstance already explained, namely, that once they were willing from natural self-interest to acknowledge tenant-right, but that now, from a change fancied or actual, in their interest, they were sometimes disposed to repent of that acknowledgment.

The Hon'ble Mr. COCKERELL—"I wish to offer some explanation in reference to a remark which fell from an Hon'ble member opposite (Mr. Maine) as to the intention of the words 'through a mistake of fact' which occur in my second amendment. It has been already stated that rights of occupancy were created at the first settlements, and for the most part on the strength of an actual twelve years' occupancy. It might easily have happened in the preparation of the record that the fact of such twelve years' occupancy was erroneously assumed, and the words referred to have been inserted in the amendment to give the landlord the power, which is not allowed to him by the Bill, of obtaining the rectification of such errors. There was a clause in the Bill as originally drawn providing a means of setting aside any entry in the settlement record, which could be shown to be at variance with the rules *laid down by the Settlement Officer, and recorded at the time of settlement*; this clause was expunged from the Bill at the suggestion of the Murree Committee in the propriety of which I fully concurred; for, whilst it had the specious appearance of serving the landlord's interest, by its admitting of the correction of such mistakes in the proceedings of the Settlement Officer as that to which I have referred, inasmuch as it is nearly

certain that, as a matter of fact, *no rules* in regard to the record of tenant-rights were laid down by the Settlement Officer at the time of settlement, the clause would not have operated to secure the rectification of such errors as are contemplated by the terms of my amendment."

The Motion was then put, and the Council divided.

For.	*Against.*
His Excellency the Commander-in-Chief.	His Excellency the President.
The Hon'ble Mr. Cockerell.	Hon'ble Mr. Taylor.
The Hon'ble Sir G. Couper.	Hon'ble Mr. Maine.
	Hon'ble Mr. Strachey.
	Hon'ble Sir R. Temple.
	Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Mr. COCKERELL then moved that, for the third ground of enhancement in section 11, the following be substituted :—

"That in the case of a tenant belonging to any of the classes specified in clause 2, 3, or 4, of section 5 or section 6, the rate of rent paid by him is, if he belong to any of the classes specified in clause 2, 3, or 4 of section 5, more than 30 per centum, and if he belong to the class specified in section 6, below the rate of rent usually paid in the neighbourhood by tenants of the same class not having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case of Court shall enhance his rent to the amount claimed by the plaintiff not exceeding such rate or not exceeding such rate less 30 per centum, as the case may be."

He said that the amendment had two objects,—

1st.—To remove from the third ground of enhancement in section 11 of the Bill, the tenants whose status was described in clause 1, section 5;

2nd.—To admit of the enchancement of the rent of tenants having a right of occupancy under section 6, to the full amount paid by tenants of the same class having no such right of occupancy.

It would be observed that the tenants described in clause I. section 5, already paid the full amount of Government revenue assessed upon the land in their occupancy, plus the village cesses, whatever they might be ; and it was stated on the authority of the officers of the Panjab who constituted the Murree Committee that tenants without rights of occupancy did not pay rent in excess of double the rate of the Government revenue. Hence the amount already paid by the class of tenants above-mentioned was already in excess (to the extent of the amount of the village cesses) of the higher amount to which they could be subjected under the operation of the Bill. Such being the case, the provision in the Bill in regard to this class of tenants was mere surplusage, and might well be omitted.

In regard to the tenants obtaining a right of occupancy under section 6 he, Mr. COCKERELL, submitted that there was no ground whatever for the share of the fair rent of the land in their occupancy which it was proposed to assign

to them. To give to this inferior class of tenants a quasi-proprietary interest in the land occupied by them, was to go far beyond the privilege conferred by Act X of 1859, on tenants whose status was created simply by a continuous occupancy of 12 years. The validation of the right to retain the occupancy of land without the consent of the owner had been defended by the assertion of the expediency of upholding the former settlement record; but that record guaranteed no beneficiary status in the matter of rent, and the provision in this Bill, which accorded such interest, was, in his (MR. COCKERELL's) opinion, wholly indefensible.

The Hon'ble Mr. STRACHEY:—"The first portion of the Hon'ble Mr. Cockerell's proposed amendment would affect the class of tenants described in the first clause of the 5th section of the Bill,—tenants who have hitherto never paid any rent, or rendered any service to the nominal proprietor, and who have paid nothing, except the land-revenue to the Government and the village cesses. I think, Sir, that in regard to this class of tenants, my Hon'ble friend, Mr. Cockerell, is, up to a certain point, right in saying that section 11 of the Bill will be inoperative, and that there will be no means of enhancing their rent. But this will only be true in cases in which the Government revenue amounts to half the rent. My Hon'ble friend may be correct in the assumption that, as a general rule, the Government demand will not be less than this amount, but we have no right to take it for granted that this will be always true. It is not only possible, but it is extremely probable, that the Government revenue may sometimes be less than this proportion, and in such cases the rent of the tenant can be enhanced. I confess, however, that personally I should have been very glad if this class of tenants had been treated differently, and I should have desired, on other grounds than those stated by Mr. Cockerell, to protect them against any enhancement of rent. It must be remembered that these people have hitherto paid no rent at all, and have rendered no services to the landlord. I have always thought it to be a serious blot on this Bill that they should be treated as tenants-at-all. They have been, to all intents and purposes, proprietors, and I can see no reason why they should not have been considered under-proprietors, as they would have been in Oudh, with complete rights of property in their holdings.

With regard to the other classes of tenants with rights of occupancy, the limitations on their rents by the Bill are admitted to be arbitrary. No reason can, I believe, be given for preferring the particular figures stated in the Bill to others that might be proposed, but there has been a very general concurrence of opinion that it is desirable to limit the rent payable by these classes of tenants to an amount considerably less than the rack-rent payable by tenants-at-will, and I think that the allowance made by the Bill in favour of these classes cannot be considered too liberal. My Hon'ble friend, Mr. Cockerell, has I think, omitted to remember that but for this Bill, there could have been ordinarily no enhancement of the rents payably by these classes of tenants during the whole term of settlement. Even with the advantages secured to them by the Bill, they will be decidedly worse off than they were before. Mr. Cockerell has observed that in the provinces in which Act X of 1859 is in force, a tenant with a right of occupancy may pay as high a rent as that which is paid by a tenant-at-will, and that in that Act there are no such limitations at those laid down in the present Bill. My Hon'ble friend possesses, I have no doubt, a more intimate acquaintance with the working of Act X of 1859 than any to which I can pretend, and he will, I hope, correct me if I am wrong. But it seems to me that he has forgotten one very important difference

between the law that is in force in Bengal and in the Panjab. In the former province, the courts will not give decrees for rents which are not in themselves 'fair and equitable.' The decisions of the High Court of Calcutta, in regard to such questions, are very favourable to tenants, and I doubt whether the provisions of this Bill, in regard to enhancement of the rent of tenants with rights of occupancy, will give advantages to that class equal to those given by the provisions of Act X of 1859, to which Mr. Cockerell has referred."

The Motion was then put, and the Council divided.

For.	*Against.*
The Hon'ble Mr. Cockerell.	His Excellency the President.
The Hon'ble Sir G. Couper.	His Excellency the Commander-in-Chief.
	The Hon'ble Mr. Taylor.
	The Hon'ble Mr. Maine.
	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Mr. STRACHEY then moved "that in section 19, the figure "(1)" and the word 'or' be omitted in lines 5 and 6, and that the clause numbered (2) be also omitted." He said—"I have failed to discover justification for this proposition, which authorizes landlords to appropriate to themselves the property of their tenants. Why these unfortunate tenants are to be selected for possible ruin, as if they were public enemies, is more than I can understand. We are deliberately declaring by this Bill that these tenants possess a heritable, and, with certain conditions, a transferable right of property in the land which they occupy. Their interest in the land may sometimes, as was shown just now in the debate on the Hon'ble Mr. Cockerell's proposed amendment to section 11, be quite as valuable as that of the landlord himself. They may have paid no rent in the past, and may be liable to no payment in the future. They will sometimes be in fact proprietors of the land in everything but name, and I can conceive no reason why these rights of property should be liable to be swept away at the will of a perhaps merely nominal landlord. I think that we may advantageously in this matter follow the example which England and other countries have given to us. My Hon'ble friend, Mr. Maine, has referred to the enfranchisement of copy-holds in England, and that subject has been more than once noticed in the papers that have been laid before the Council. It seems to have been thought by some that this Bill recognized a principle similar to that which has been acted upon in regard to copyhold tenures in England.

There could hardly be a more complete mistake. The Lieutenant Governor of the Panjab has more than once said, and the Financial Commissioner has stated the same in a passage which I have to-day read to the Council, that the position of the English copyholder to some extent resembled that of our tenants with rights of occupancy. Measures have been taken to relieve the copyholder from the obligations under which he stood to the lord of the manor, but the clause in this Bill to which I am now objecting proposes the exact converse of the measures that have been adopted in England. It proposes, as a learned friend of mine very justly observed, not to enfranchise the copyholder but to enfranchise the lord.

It would, I think, have been altogether proper if the Bill had given power to the hereditary occupier of the land to buy out the rights of the landlord.

A remark to this effect was made by my Hon'ble friend, Mr. Taylor His Excellency Sir William Mansfield has spoken as if Mr. Taylor had made a somewhat extravagent proposition, but it seems to me that Mr. Taylor really did no more than give his approval to a principle which has been fully accepted and acted upon in England and in other countries of Europe.

My Hon'ble friend, Sir Richard Temple, in his speech on the motion to take this Bill into consideration spoke as if His Honor the Lieutenant Governor had approved the clause of which I am now objecting. But if I understand His Honor's views correctly, I doubt very much whether he would think it right that this clause should become law, unless further provisions were added for the protection of the tenant. For I find that in remarking on a section in Mr. Brandreth's original Bill, similar in effect to this clause, the Lieutenant Governor stated his opinion that a section ought to be added, giving power to the tenant to buy out the rights of landlord, if an enhanced rent were demanded from him. If this proposition had been adopted, the effect would have been highly beneficial to the tenants, and it would have added materially to the value of their interest in the land.

I desire also to call the attention of the Council to the remarks on this subject made by the Lieutenant Governor in his Minute of the 13th September 1866. He there said, speaking of certain classes of tenants with rights of occupancy :—'This class of persons, it seems to me, should be regarded very much in the same light as 'copyholders' in England. Those only can claim this last-named designation whose names have appeared on the court roll 'time out of mind,' and although this period of incumbency can be claimed by but few in this province, the class to which I refer appears to me to occupy here a very analogous position to the copyholder of England. * * Five statutes at least have been enacted during the present reign to enable copyholders to enfranchise their tenures, or convert them into free-holds, and it would, I think, be exceedingly desirable to hold out similar facilities to this highest class of tenants or sub-proprietors in this country to purchase for themselves the status of proprietors in full.'

This is exactly what I maintain would have been the proper course to follow. Sir Richard Temple spoke as if he believed that if this clause became law, it would remain almost a dead letter. This may be true, but it would not therefore cease to be mischievous. We should have upon the statute book a recognition by the Legislature of a false principle, and one that has been recognized hitherto by no law in any country of which I have ever heard.

I think it very objectionable that the law should seem to encourage the belief that it is desirable to get rid of tenants having permanent interests in the land, and to substitute for them tenants-at-will, liable to ejectment as the landlord may arbitrarily please, and whose rents are limited neither by law nor custom, but depend only on competition. I protest against any legislation which tends to abolish a tenure which is economically good, and to substitute for it a tenure which is economically bad.

When the sacrifice of private interests is necessary for the public benefit the sacrifice must of course be made. In the present instance, it is proposed

to authorize by law an infringement of private rights, not only with no pretence that this is necessary for the public good, but as it seems to me, in violation of the obvious requirements of public policy."

The Hon'ble Mr. TAYLOR.—"In seconding the motion of Mr. Strachey, I have nothing to add to what I have already said on the subject of the clause to which it relates, except to express my entire concurrence in the objections which my Hon'ble friend has advanced against the novel, and, as it seems to me, unjust principle it seeks to introduce.

I must, however, take the opportunity of saying that Mr. Strachey has exactly stated the position which I advocated in regard to the rights belonging to the proprietor and the hereditary cultivator respectively in relation to the land. He has very correctly explained the real scope and effect of my proposal to enfranchise the restricted tenure of the ryot, a proposal upon which His Excellency the Commander-in-Chief has put an interpretation which my words were certainly not intended to convey. Nothing can be further from my wish than to weaken or destroy proprietary right, or, as Sir W. Mansfield expressed it, 'to improve the landlord off the face of the land.' On the contrary, my desire is, and always has been, to 'comfort' tenures and to strengthen rights in land wherever they are found to exist.

I repeat that I regard the tenant-right of the registered cultivator, the occupancy-ryot, or other hereditary holder of land throughout India, as that of co-proprietorship: he shares the proprietary right with the Government in those parts of the country where the direct ryotwary system is in vogue, and he shares it elsewhere with the proprietor, whoever he may be, who is recognized by Government, and to whom he pays the rent. I understand Sir William Mansfield to maintain that this co-proprietary tenure should be destroyed by degrading the hereditary occupier into a tenant-at-will; whereas I contend that it is for the advantage of all parties, and of the country generally, that the restricted tenure of the industrious farmer of the land should be enfranchised in the manner I have described, by the payment of a fine, or compensation to his co-proprietor.

Nor am I unmindful of the superior tenures such as mirasi and others, which exist in some parts of India, to which His Excellency has alluded. In the Minute from which I have already quoted, and which is now before me, I find that I stated several years ago when discussing the various interests connected with the land in India as follows:—'Speaking, generally, the interests of the cultivating or village communities of India are of two kinds,—the first is a transferable interest, constituting a perfect right of property, and is derived from a grant of the sovereign power, whether of a special individual character or consisting of a more general concession in favor of the whole body of cultivators. Of this description are the mirasi tenures in parts of Southern and Western India, where the village communities have claimed from time immemorial the possession of a transferable right of property in the soil. This description of tenure, though it has very generally disappeared, is still in existence in one small district of the Madras Presidency, and I believe, also in parts of Bombay; and wherever it exists, the rights of the mirasidars in the waste, as well as in the cultivated, lands are strictly respected by the Government, and they dispose of both by transfer or sale at will. In most other parts of the Empire, this transferable interest is not enjoyed by the

registered cultivators, and the proposal which I have ventured to advocate is that they should be allowed to purchase this right as regards the cultivated lands in their possession."

The Hon'ble Sir R. TEMPLE confessed himself unable to answer Mr. Strachey's arguments about the injustice of compelling tenants of the superior classes or of very old standing to be bought out. But as regards the rest of the occupancy-tenants, the arrangement would be fair enough. He would oppose Mr. Strachey's general amendment, on the understanding that, if it were lost, he (Sir R. TEMPLE) would propose a subordinate amendment, to the effect that tenants of the superior classes and of very old standing should be exempted from the liability to be compulsorily bought out.

His Excellency the COMMANDER-IN-CHIEF :—" When I read this section, I imagined that there had been for the moment a feeling of compunction towards the landlord. It seemed to me that in framing it, a sentiment of compassion had actuated the Committee—a sentiment developing itself in an equitable provision, for it can hardly be denied that this Bill is an occupants' Bill with the single exception of this section, which my Hon'ble friend, Mr. Strachey, would now wish to sweep away. I may cite in support of my opposition to this amendment the opinion of the experienced gentleman who lately officiated as Secretary in the Foreign Department, and is known to be a very staunch advocate of the principles favoured by the Bill.

He says,—

'Although I am in favour of the principle of empowering landlords to buy out hereditary tenants, and the hereditary tenants to buy up the landlord's right under certain fixed conditions, &c., &c.'

The Hon'ble Mr. STRACHEY :—" His Excellency the Commander-in-Chief has quoted the opinion of Mr. Aitchison in favour of this clause of the Bill; but I wish to point out that this opinion was qualified to so great an extent by Mr. Aitchison himself, that I am, I think, fairly entitled to claim his authority in support of the views which I have advocated. 'Although,' he said, I am in favour of the principle of empowering landlords to buy out hereditary tenants, and hereditary tenants to buy up the landlord's right, under certain fixed conditions, I strongly dissent from the decision of the majority of the Committee embodied in section 22 of the amended Draft Bill. The section as it stands, without a corresponding provision in favour of hereditary tenants, is unjust. There are hundreds of men who under this Bill will be tenants with rights of occupancy, whose position differs little in reality from that of landowners. They have cultivated the land from time out of mind; they have paid no rent other than the Government revenue; they have paid revenue by *bach* like proprietors; they are occasionally even recorded as entitled to a share of *shamilat* lands in the event of partition. These men, merely from the fact of their having been regarded as *tenants*, whatever that may have meant at the time, will come under all the liabilities of tenants with rights of occupancy under this Bill. Over such men the landlord's right is merely potential, and it is unjust to give a preference to such potential rights over rights of a very valuable kind which have been long actually enjoyed. In such cases if the power to buy up rights is given at all, the tenant with hereditary right should have the power of ridding himself of the landowner's hold on him.'

I think, Sir, that this quotation shows clearly that if Mr. Aitchison's authority be quoted, it must be quoted in support of the views which I have maintained, and not in opposition to them.

His Excellency Sir William Mansfield has spoken as if this Bill were in the nature of a compromise, and as if having given a great deal to the tenants, we ought not to maintain this clause, which has at least the appearance of giving an advantage to the landlords. I cannot admit that such reasons as this ought to influence the Council in its decision. The real question is what is just and proper. And I wish to remind the Council that it has never been pretended by any one that this clause is in accordance with any custom that prevailed in the Panjab before the British conquest, or with any custom that has grown up since. It is admitted to be an absolute novelty, and it seems to me to be a novelty that is thoroughly unjust and altogether opposed to public policy.

The Hon'ble Mr. COCKERELL said that as a member of the Select Committee on this Bill, he was in a position to state His Excellency the Commander-in-Chief's conclusion that the 2nd clause of section 19 was designed to be in the nature of a compromise, is perfectly correct. The necessity for some such provision as a counterpoise to the immense advantages which the Bill confers on the tenant, had been consistently maintained from the first; it was introduced into Mr. Brandreth's original Draft Bill, on the ground that without it great hardship might be inflicted on the peasant proprietor who had relinquished the cultivation of his land to a tenant and had, by so doing, suffered adverse rights to spring up, which precluded him from re-entering on such lands as an occupant, although the occupancy might be required for the support of his family. The clause stood in its present shape when the Bill, after first amendment by the Select Committee, was referred to the Government of the Panjab. To cancel the provision now would be highly impolitic and unjustifiable, as it constituted the sole compensation which the proposed legislation offers to the landlord for the rights of which it deprived him.

The Hon'ble Mr. MAINE said that he did not intend to support the amendment, but he could not allow the Commander-in-Chief's observation that the Bill was entirely in the interest of the tenant, to pass without remark. Under clause two of section, six, no less than 19,000 out of the 46,000 erasures from the settlement record, recently made by the Settlement Officers, would be sustainable; and that was independent of other grounds of rebuttal. The compromise, therefore, was, on merely numerical principles, not unfair.

His Excellency the COMMANDER-IN-CHIEF said that he was aware of the second sentence in Mr. Aitchison's letter, which he had read more than once. But he had also read the mass of papers which had been laid before the Council, and had been given to them as evidence of the state of things prevailing in the Panjab prior to the annexation of that Province, and he also bore in mind the denial of rights which had been expressed by those to whom he was unhappily opposed. Now, it was clear that if the alleged anarchy had swept away rights in the Panjab at the time alluded to, that there were no records to refer to, and that there was no vestige of trustworthy custom, it was obvious that the argument held against one side as well as the other, and there-

fore that Mr. Aitchison's pleading might be dismissed with the other arguments about rights which it was declared were of no avail. But in fact in considering these things, we might fall back on the feeling of equity in dealing with both classes, and this it was that made him use the expressions that the Committee had drafted the section in compunction and in a spirit of compromise towards the proprietors.

The Motion was then put and the Council divided.

For.	*Against.*
His Excellency the President.	His Excellency to Commander-in-Chief.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Strachey.	The Hon'ble Sir R. Temple.
The Hon'ble Colonel Norman.	The Hon'ble F. R. Cockerell.
	The Hon'ble Sir G. Couper.

So the Motion was lost.

The Hon'ble Sir GEORGE COUPER, moved that in section 34, clause 1 and 2 be omitted, and that in clause 3 for 'every other,' the word 'any' be substituted. In other words, he said that the right of alienation conferred by the section on a tenant having a right of occupancy might be struck out. The late Mr. Thomason, who was the first authoritative expounder of the great doctrine of tenant-rights of occupancy, never went so far to as say that those rights were susceptible of alienation. The 'Directions to Settlement Officers' were not at hand to refer to; but he thought His Excellency the President would bear him out when he said that those rights were therein defined to be 'hereditable but not transferable.' And the Committee which were assembled under the express instructions of His Excellency in Council to enquire into and report on the provisions of this Bill, had recorded the following opinion with reference to this section :—"with regard to the right of alienation, the Committee concur in thinking that as the power of alienation so conferred is entirely contrary to existing custom and to the existing law and records of early settlement, it is undesirable to introduce it." And the Hon'ble the Lieutenant Governor of the Panjab than whom, except His Excellency the President, there was no higher authority on these matters, had remarked that the "Committee had been composed of some of our ablest and most experienced men representing various shades and diversities of opinion. They had considered all matters discussed in the Bill most fully, laboriously and conscientiously and had, His Honour firmly believed, arrived at conclusions in consonance with the feelings of the people and the interests of jutice. His Honour sincerely trusted therefore that these conclusions might be accepted."

He thought then it would not be denied, and that he might safely affirm that, up to this time, the right of alienation on the part of the tenant having a right of occupancy had never existed. By this section it would be created. Now, why should it be created? His Excellency the Commander-in-Chief had, in effect, put the same question, and was informed in reply by the Hon'ble Members who had charge of the Bill that the privilege was extended to superior classes only, and "was most strictly limited." But that was no answer; and as a matter of fact, the privilege was extended to every single tenant who was deemed by the Bill to have a right of occupancy.

He was therefore of opinion that no ground had been shown for the creation of this right in a Bill which purported to be a compromise between the claim

of the respective classes of landlord and tenant, especially as its creation would be contrary to the concurrent and earnest advice of all the local officers who were best qualified to form an opinion on the subject.

The Hon'ble Sir R. TEMPLE said that the power complained of was given only to a superior class of tenants, and would be exercised subject to the right of pre-emption conferred on the landlord by the second clause of section 34.

His Excellency the PRESIDENT said that, doubtless no power of alienation was given by the Settlement Directions; but in the cases contemplated by the first and second clauses of section 34, the tenants had nearly a full proprietary right, and might fairly be allowed the power of alienation, subject to the landlord's right of pre-emption.

The Motion was then put, and the Council divided.

For.	*Against.*
The Hon'ble Mr. Cockerell.	His Excellency the President.
The Hon'ble Sir George Couper.	His Excellency the Commander-in-Chief.
	The Hon'ble Mr. Taylor.
	The Hon'ble Mr. Maine.
	The Hon'ble Mr. Strachey.
	The Hon'ble Sir R. Temple.
	The Hon'ble Colonel Norman.

So the Motion was lost.

The Hon'ble Sir GEORGE COUPER then moved that in section 37, line 1 the words 'at will with his landlord's consent' be inserted after 'tenant,' and the words 'he or' be inserted after 'occupancy' in the second line. In dissenting from the provision that a tenant-at-will should be entitled to compensation for improvements effected without his landlord's consent, he was again merely representing the views of the Committee whose report he had before referred to, and those of the Hon'ble the Lieutenant Governor of the Panjab, which he had already quoted. Moreover, the terms of the section appeared to him to involve a contradiction. For how could a man be held to be a tenant-at-will who, by the performance of an act without his landlord's consent, could compel the landlord, in his turn, to compensate him for that act before he could evict him or enhance his rent? He ceased to be a tenant-at-will. He became a tenant subject to certain conditions imposed upon his landlord by the Legislature, and he thought it inexpedient that the Legislature should interfere between man and man and impose such conditions. It might be said it would be hard that a hard-working, frugal tenant-at-will, who had expended money or labour on his holding, should be liable to eviction in order that his landlord or another might reap what he had sown. And if the section only prevented this, it might not be objectionable. But it went further, and enabled a thriftless, revengeful tenant-at-will, who had been properly evicted, to bring an action against his landlord for compensation for improvements which might never even have been made at all. It might be said that in such case, the tenant would lose and the landlord would win the suit. But under no circumstances was a law suit a pleasant thing. And there was nothing which a Native of rank, or even of ordinary respectability, more heartily hated than the prospect of having to undergo the risk, the anxiety, and the expense consequent on having to defend a suit. The section, as he had already said, enabled a malignant tenant-at-will to drag his innocent landlord through some portion of this dirt, that is, to entail upon him some amount at least of unnecessary risk, annoyance, and expense. Therefore he would say, let well

alone, do not interfere by legislative enactment in matters which may safely, which had best, be left to be settled by the parties concerned among themselves.' And if a tenant-at-will chooses to expend money or labour on his holding without protecting himself by an agreement, or without taking even the simple and ordinary precaution of obtaining previously the consent of the man at whose will he holds, let him abide the consequences of his own folly.'

The Hon'ble Mr. Strachey:—"My Hon'ble friend, Sir George Couper, has objected to this section of the Bill entirely on general grounds. He has not asserted, nor, so far as I am informed, has it been asserted by any one that in the matter of tenants' improvements, there are special reasons why the principles laid down in the Bill should not be made applicable to the Panjab.

Now, so far as the general principle at issue is concerned, it must be remembered that only three months ago the Oudh Rent Act was passed by this Council. The sections in the present Bill, which refer to tenants' improvements, are, with one slight alteration, in favor of the landlord taken *verbatim* from the Oudh Act. There is absolutely nothing in this part of the Bill which has not already received the sanction of the Legislature.

The Council is aware that every part of the Oudh Act was discussed by me and by the present Chief Commissioner and Financial Commissioner with the principal talukdars. Although there was a great deal of controversy regarding many other parts of the Bill, I can say confidently that in regard to this question of the right of tenants to claim compensation for improvements made by them on the land, there was really no controversy at all. I well remember the most intelligent and the most influential of all the talukdars of Oudh saying to me that he did not see how there could be any objections to such provisions as these, because it was impossible that the landlord should suffer injury from having his land improved by the tenant. I cannot understand how a reasonable landlord could come to any other conclusion.

Since my Hon'ble friend, Sir George Couper, has raised this question on general grounds, and not on grounds peculiar to India or the Panjab, I think that he might have noticed the fact of the almost constant discussion on the subject which have been going on for several years past in the British Parliament. The question of compensation for tenants' improvements has been debated and reported on and written about to such an extent that it is really impossible to say anything new regarding it. I think that no question could be named which has been more completely argued out than this; and that this is true can hardly be better shown than by the fact that both the great parties of the State have practically agreed in regard to the principle on which the question is to be disposed of. In principle, there is hardly any difference between the Bill brought into Parliament in the last Session by the present Conservative Government and that brought in two years ago by Mr. Chichester Fortescue on behalf of the Government of which Mr. Gladstone was the head. I have not got the Bill of the present Session to refer to, but I have no doubt that I am right in saying that it allowed improvements of the character described in section 38 of the Bill now before us to be made by the tenant without the previous consent of the landlord. This principle, indeed, has been so generally admitted, that no future event can well more certain that this, that whatever party be in power, we shall see before long an Act of

Parliament giving to tenants in Ireland authority to make certain classes of improvements on their holdings without asking the previous consent of the landlord.

My Hon'ble friend, Sir George Couper, has spoken as if it were proposed by this Bill to place restrictions on the freedom of contract between landlord and tenant. But, in reality no such restrictions will be imposed. The landlord and the tenant will be free to enter into any agreement that they please in regard to the making of improvements. All that the Bill says is, that if no agreement has been made, it will be assumed that improvements made at the expense of the tenant have been made with the tacit consent of the landlord. It is matter of simple justice that, in the absence of any agreement to the contrary, a man shall reap the benefit of his own industry, and that the property which he has invested in the improvement of the land, without objection on the part of the landlord, shall not be liable to confiscation if the landlord chooses to commit so gross an act of injustice. My Hon'ble friend has spoken as if claims would be made to the serious injury of the landlord on account of purely imaginary improvements. My answer is that the Bill distinctly declares that no compensation shall be claimable except for *bonâ fide* improvements, by which the annual letting value of the land is increased; and a landlord can never be called upon to pay to a tenant a farthing more than the additional value which has been actually given to the land by the expenditure by the tenant of his own money and labour. In case of difference between the parties as to the amount of compensation to which the tenant is fairly entitled, the Bill provides that application may be made to the Court on paper bearing a stamp of eight annas, requesting that the matter may be determined. There will be no suit, and the procedure followed will be of the simplest kind possible.

I was not aware, until my Hon'ble friend's amendment was actually proposed, that it was his intention to raise this question. If I had known that this amendment was to come forward, I should have brought with me some papers which would have enabled me to lay before the Council some information of interest in regard to the manner in which even in England, where there is no written law on the subject, tenants practically obtain the benefit of improvements which they have made at their own cost. I happen, however, to have with me a book from which I should like to read a passage in illustration of what I have now said. It contains an account of a case which came before Justices Coleridge and Erle in the Court of Queen's Bench on the 26th November 1861 by way of appeal from a County Court in Derbyshire. 'The tenant was a yearly tenant on the terms that he should use and cultivate his farm in a good and tenantable manner according to the rules of good husbandry. The tenancy was determined by notice to quit given by the landlord, and the tenant then claimed to recover £50 for drainage works made without the knowledge or consent of the landlord. The custom was proved that every out-going tenant should be entitled to claim from the landlord compensation for works, though done without the landlord's knowledge or consent.' It was contended for the landlord that the alleged custom could not be supported as being unreasonable and bad. 'Mr. Justice Coleridge said—' It seems to me not an unreasonable custom that a tenant who is bound to use the farm in a good and tenantable manner, and according to the rules of good husbandry, should be at liberty to charge his landlord with a portion of the expense of draining the land that requires drainage according to good husbandry, though the drainage be done without the landlord's knowledge or consent.' Mr. Justice Erle said

if it be not unreasonable as a contract, I do not see that it is unreasonable as a custom.'

It seems to me, Sir, that these principles, which are those laid down in the present Bill, are principles of obvious justice and of universal application and I hope that the Council will refuse to agree to the amendment that has been proposed."

The Motion was then put, and the Council divided.

For.	*Against.*
The Hon'ble Sir George Couper.	All the other Hon'ble Members.

So the Motion was lost.

The Hon'ble Mr. STRACHEY moved that in section 36, lines 4, 5, 7, 8, the words "residing in the village in which such land is situate" and "residing in the same village" be omitted, and that in line 14 for "the same village," the words "the village in which such land is situate" be substituted. He said:—

"This section, as it now stands in the Bill, is based on a decision of the Chief Court of the Panjab, dated the 5th December last and it may be considered to represent the view which has been taken by the highest judicial tribunal of the province in regard to the existing law which regulates the succession of hereditary cultivators to rights of occupancy. In proposing my present amendment, I am, therefore in fact, proposing to make a change in the present law, which declares that a collateral heir in the male line can only claim the right of succession if, on the death of the tenant, he is residing in the same village.

Now I do not deny that such rule as this may formerly have been reasonable enough. When these rights of occupancy were, strictly speaking, no rights at all, and when they often consisted in the mere right to cultivate, there was perhaps nothing very unreasonable in considering that no one ought to succeed to the occupation of the land who was not present in the village and ready to carry on the cultivation. His Excellency the Commander-in-Chief observed with much truth that we ought not to pay more attention to mere custom than the custom may deserve, and that we must base our legislation on more solid foundations. There can be no doubt that the courts of all civilized countries act in accordance with this principle, and refuse to recognize customs which have clearly ceased to be beneficial.

As the old legal maxim says, *malus meus est abolendus*. It seems to me that this maxim may be fairly applied in the present instance. For these rights of occupancy, which were formerly so vague and indefinite, have now become actual rights of property, and, as it has been shown to-day, they may sometimes be actually more valuable than the rights of the nominal proprietor of the land. The tenant may belong to the class which has never paid any rent, or rendered any services to the proprietor but has paid the Government revenue and the village cesses. In all other parts of India with which I am acquainted, these would be considered the most obvious signs of proprietorship and indeed it is difficult to see what better signs of proprietorship could be given.

I have been assuming that the rule of succession laid down in the Bill is in accordance with the custom prevailing in the Panjab but in reality I do not understand the Chief Court to have asserted this, and in order that the Council may fully understand the grounds of the Court's decision, I will read a portion of the judgment to which I have referred ;—The law on the subject is contained in paragraph 128 of Directions to Settlement Officers, North-Western Provinces, and Clause 13, Section XXI, Part I of the Panjab Civil Code. The former says that 'sons or their immediate heirs residing with them in the village would succeed ;' the latter that the 'next male heir or heirs will succeed to these privileges.' This language of the Code is wide enough to admit of the interpretation that the same rules apply to succession to the rights of hereditary cultivators and to succession to the rights of ownership of land, and the words 'immediate heirs' in the above quotation are rather vague ; but the best authorities have held that the succession of collaterals in the male line is limited, and the only question is the extent of the limitation. There has been considerable difference of opinion upon this head, and the point is not without doubt; but the rule laid down in the above quotation from Cust's Revenue Manual, with the qualification that the collaterals must also reside in the same village as the land is situate, seems on the whole to be better supported.'

I think it will be clear from this quotation that I have really proposed no great innovation on existing customs, if indeed there be any innovation at all. I do not think that it can be maintained that when legislation on this subject has become necessary, we ought to declare that the right to succeed to a man's property shall depend on the accident, whether at the time of his death, the natural heir happens to be living in a certain place, and that if he is not living in that place, the property shall pass absolutely to a stranger. Such a law would, I think be unreasonable and unjust, and I therefore ask your Excellency and the Council to agree to the amendment which I have proposed."

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the President.	His Excellency the Commander-in-Chief.
His Excellency the Commander-in-Chief.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Cockerell.
The Hon'ble Mr. Strachey.	The Hon'ble Sir George Couper.
The Hon'ble Sir R. Temple.	
The Hon'ble Colonel Norman.	

His Excellency the COMMANDER-IN-CHIEF said that he had taken note of Sir Richard Temple's statement with respect to the Panjab Code having generalized the principle of adoption even in matters to which it was not previously admitted by the custom of the people. There must have been some reason for the custom being against it in this instance. His Excellency submitted that there could be no doubt that there would be great inconvenience in permitting the practice of adoption to apply to cases of succession to rights of occupancy. The Hon'ble Mr. Strachey's amendment had removed one great evil with which the law as hitherto administered had allowed succession to remain encumbered. He, the COMMANDER-IN-CHIEF, in a spirit of fairness to the proprietors, would now go a step further and relieve the law of another *malus usus.* He would therefore, with His Excellency the President's permission, move that the following explanation be added to Section 36 :—

"*Explanation.*—The words 'descendants' and 'relatives' in the former part of this section do not include adopted sons."

The Hon'ble Sir R. TEMPLE protested against limiting the right of adoption which every Hindu possessed. No distinction had ever been made either by usage or by the courts, between the exercise of the power to adopt in cases of succession to an occupancy-right and the exercise of the same power in other cases.

The Hon'ble Mr. STRACHEY expressed his concurrence with the Hon'ble Sir R. Temple.

The Motion was put, and the Council divided.

Against.	*For.*
His Excellency the President.	His Excellency the Commander-in-Chief.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Strachey.	The Hon'ble Mr. Cockerell.
The Hon'ble Sir R. Temple.	
The Hon'ble Colonel Norman.	
The Hon'ble Sir George Couper.	

The Hon'ble Sir R. TEMPLE then, with His Excellency the President's permission, moved that to section 19 the following clause be added :—

"Nothing in the last preceding clause shall be deemed to apply to a tenant belonging to any of the classes described in section 5, or to a tenant when he or the person from whom he has inherited shall have continuously occupied such land for thirty years or upwards."

He said that this amendment was intended to prevent injustice arising in the manner averred, with some truth, by Mr. Strachey. If carried, its result would be that those occupancy-tenants who were of the superior classes, or of ancient standing, could not be bought out at all; and that the others, if they were to be bought out at all, must be arranged with in a reasonable brief time before they become ancient, and thereby entittled to exception.

The Hon'ble Mr. COCKERELL submitted that the amendment proposed by the Hon'ble mover of the Bill was practically the same as that just moved by Mr. Strachey, and vetoed by the Council. So far as we had any means of judging of the effect of this provision, it might be assumed that it would include very nearly, if not absolutely, the whole of the tenants comprehended by section 6. Mr. COCKERELL trusted, therefore, that the Council would not, in the present state of its information on the subject, accept the Hon'ble Mover's proposal.

The Motion was put, and the Council divided.

For.	*Against.*
His Excellency the President.	His Excellency the Commander-in-Chief.
The Hon'ble Mr. Taylor.	The Hon'ble Mr. Maine.
The Hon'ble Mr. Strachey.	The Hon'ble Mr. Cockerell.
The Hon'ble Sir R. Temple.	The Hon'ble Sir George Couper.
The Hon'ble Colonel Norman.	

The Hon'ble Mr. COCKERELL asked His Excellency the President to republish the Bill, under the 29th Rule for the Conduct of Business, before the motion "that the Bill be passed" be put.

He said that he made this request because a most important amendment, the effect of which the Council had not yet had a full opportunity of consider-

ing, had been somewhat hurriedly carried at this late hour of the day, and it was highly desirable that those whose interests were most materially concerned by this change in the Bill, should have an opportunity of expressing their views on the matter before the Bill as amended became law.

The Hon'ble Sir R. TEMPLE expressed his hope that the President would not comply with Mr. Cockerell's request. The Bill was urgently needed, and there had been far too much delay already.

The Hon'ble Mr. STRACHEY said that, so far from the Bill having been discussed too little, in his opinion it had been discussed too much. He referred, of course, not to discussions in this Council, but to the discussions that had taken place in the Panjab. He thought that on grounds of political expediency, it was highly necessary that the Bill should become law at once.

His Excellency the PRESIDENT declined to accede to the Hon'ble Mr. Cockerell's request.

The Hon'ble Sir R. TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned to Wednesday, the 28th October 1868.

SIMLA,
The 20th October 1868.

ACT No. XXVIII OF 1868.

THE PUNJAB TENANCY ACT.

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An Act to define and amend the law relating to the tenancy of land in the Panjab.

Preamble. WHEREAS it is expedient to define and amend the law relating to certain matters connected with the tenancy of land in the Panjab; It is hereby enacted as follows:—

CHAPTER I.—PRELIMINARY.

Short title. Extent of Act. 1. This Act may be called "The Panjab Tenancy Act, 1868," and shall extend only to the territories for the time being under the government of the Lieutenant Governor of the Panjab.

Saving of decrees and of agreements between landlords and tenants.

2. Nothing contained in this Act shall affect the operation of any decree of Court under which a tenant holds or of any agreement between a landlord and a tenant, when such agreement is in writing or recorded by the proper officer in the record of a regular settlement sanctioned by the Local Government.

All entries in such record in respect of matters comprised in Chapters III, IV, V and VI of this Act shall, when attested by the proper officer, be deemed to be agreements within the meaning of this section.

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context—

"Land"

"Land" means immoveable property for the time being subject to a settlement, whether regular or summary, of land-revenue ;

"Rent,"

"Rent" means whatever is payable by an occupant of land on account of the use or occupation thereof ;

"Arrear of rent."

Any instalment of rent which is not paid on or before the day when the same becomes due, whether under a written agreement or according to law or local usage, shall be deemed to be, for the purposes of this Act, an arrear of rent ;

"Tenant."

"Tenant" means any occupant of land liable to pay rent therefor, but does not include an under-proprietor ;

"Landlord."

"Landlord" means any person entitled to receive rent payable by a tenant.

"Grand-father" "uncle," and "grand-uncle."

"Grand-father" includes the father of an adoptive father, "uncle" the brother of an adoptive father and "grand-uncle" the adoptive father of an uncle ;

"Representative."

"Representative" means an heir or any other person taking by operation of law or by will a beneficial interest in the property of a deceased person.

Repeal of Book Circular No. 33 of 1860.

4. The Book Circular of the Financial Commissioner of the Panjab, No. 33 of 1860 is hereby repealed.

CHAPTER II.—OF RIGHTS OF OCCUPANCY.

Tenants having right of occupancy

5. Every tenant who—

(1) has heretofore paid no rent and rendered no service, in respect of the land occupied by him, to the proprietor thereof for the time being, beyond the amount of land-revenue and village-cesses for the time being chargeable thereon, and whose father and grandfather, uncle and grand-uncle occupying the same land, have paid no rent and rendered no service in respect thereof to such proprietor, beyond the amount aforesaid.

(2) or who has involuntarily parted or shall involuntarily part with proprietary rights in any land otherwise than by forfeiture to Government; and who has continuously occupied or shall continuously occupy such land or any part thereof from the time of such parting ;

(3) or who is at the date of passing this Act the representative of a person who settled as a cultivator in the village in which the land occupied by such tenant is situate along with the founders of the village ;

(4) or who is or has been jagirdar of the village or any part of the village in which the land occupied by him as tenant is situate, and who has continuously occupied such land for not less than twenty years—

shall be deemed to have a right of occupancy in the land so occupied.

6. Every tenant whose name appears in the records of a regular or revised settlement heretofore sanctioned by the Local Government, as having a right of occupancy in land which he or the person from whom he has immediately inherited has continuously occupied from the entry of his name or the name of such person (as the case may be) in such settlement, shall be presumed to have a right of occupancy in the land so occupied.

Presumption arising from entry in settlement record.

Rebuttal of presumption.

unless the landlord shall in a regular suit prove—

(1) that within the thirty years immediately before the institution of such suit other tenants of the same class in the same or in adjacent villages have ordinarily been ejected from their holdings at the will of the landlord; or

(2) that the tenant has voluntarily admitted before any officer employed in making or revising a regular settlement of land revenue or before any officer authorized to attest the entries in the record of such settlement, that he is a tenant not having a right of occupancy, and that such admission has been recorded at the time by the officer so employed or authorized.

Right of occupancy in land taken in exchange.

7. If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord, the land taken in exchange shall, for the purposes of this Act, be held to be subject to the same right of occupancy as the land given in exchange would have been subject to if the exchange had not taken place.

Suits to establish rights of occupancy on other grounds.

8. Nothing herein contained shall be deemed to preclude any person claiming a right of occupancy on any ground other than the grounds hereinbefore specified from suing to establish such right.

Non-acquisition of right of occupancy by lapse of time.

9. No tenant shall be deemed to acquire a right of occupancy by mere lapse of time.

And no right of occupancy in the common land belonging to a pattidari village-community shall be acquired under this Chapter.

CHAPTER III.—Of Rent.

1.—*Enhancement.*

Decree for enhancement of rent.

10. No tenant shall, in the absence of an agreement or decree of Court to the contrary effect, be held liable, in a suit for arrears of rent in respect of any land, to pay rent exceeding in amount the rent payable by him in respect of such land for the last preceding agricultural year, unless a decree for the enhancement of the rent has been made as hereinafter provided.

The said Lieutenant Governor shall have power, from time to time, by notification in the official *Gazette*, to declare for all or any of the Districts under his government the day on which the agricultural year shall, for the purposes of this section, be deemed to commence.

Grounds of enhancement.

11. The Court may decree that the rent previously payable by any tenant having a right of occupancy may be enhanced on any of the following grounds:—

1*st Ground.*—That the quantity of land held by him as tenant exceeds the quantity for which he has previously been liable to pay rent.

Rule.—In this case the Court shall decree rent for the land in excess at the same rate as that payable in respect of the land of a similar description and with similar advantages held by him of the same landlord.

2nd Ground.—That the rate of rent paid by him is below the rate of rent usually paid in the same or adjoining villages by the same class of tenants having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff not exceeding such rate.

3rd Ground.—That the rate of rent paid by him is,

if he belong to the class described in clause I of section five, more than fifty per centum,
if he belong to any of the classes specified in clause 2, 3 or 4 of section five, more than thirty per centum,

and if he belong to the class specified in section six, more than fifteen per centum,
below the rate of rent usually paid in the neighbourhood by tenants of the same class not having a right of occupancy for land of a similar description and with similar advantages.

Rule.—In this case the Court shall enhance his rent to the amount claimed by the plaintiff not exceeding such rate, less fifty per centum, thirty per centum or fifteen per centum as the case may be.

Enhancement when tenant pays revenue or cesses.

12. If the revenue or any of the village-cesses is payable by the defendant, the rate to which his rent may be enhanced shall be reduced by the amount so payable.

Suit for re-enhancement.

13. After a decree has been passed under section ten, no suit shall lie against the defendant for re-enhancement of his rent until the expiration of five years from the date of such decree, unless in the mean time there has taken place a general revision of regular settlement, under which the revenue payable for the land comprised in the decree has been increased.

2.—Abatement.

Grounds of right to abatement.

14. Every tenant having a right of occupancy shall be entitled to claim abatement of the rent previously paid by him on either of the following grounds, and on no others:—

(1) that the area of the land in his occupation has been diminished by diluvion or otherwise, or proved to be less than the quantity for which rent has been previously paid by him; or

(2) that the productive powers of such land have been decreased by any cause beyond his control.

3.—Remission.

When Court may allow remission from rent.

15. Notwithstanding anything hereinbefore contained, it shall be lawful for the Court, in making a decree for an arrear of rent,

if the area of the land in the tenant's occupation has been diminished by diluvion or otherwise,

or if the produce of such land has been diminished by drought or hail, or other calamity beyond his control, to such an extent that the full amount of rent payable by him cannot, in the opinion of the Court, be equitably decreed,

to allow such remission from the rent payable by him as may appear equitable:

Provided that if the tenant hold a lease for an unexpired term of not less than five years, or have a right of occupancy in a revenue-paying estate, no such remission shall be allowed to him, unless a remission of revenue has been allowed on the same ground and by competent authority in respect of the same estate.

4.—*Rent in Kind.*

16. No commutation of rent in kind into rent in money, and no commutation of rent in money into rent in kind, shall take place without the consent of both the landlord and the tenant.

Commutation of rent in kind.

17. Whenever rent is taken by division of the produce in kind, or by estimate or appraisement of the standing crop, or other procedure of a similar nature, requiring the presence of the person entitled to the rent and of the cultivator, either personally or by their recognized agents,

Division and appraisement of produce taken for rent.

if either party neglects to be present at the proper period,

or if a dispute arises between the parties regarding such division, estimate or appraisement,

either party may present an application to the Court, on a paper bearing a stamp of eight annas, requesting that a proper person be deputed to make the division, estimate or appraisement.

18. On receiving such application and such sum, to be paid in the first instance by the applicant, as the Court thinks sufficient to defray the costs of serving the notice and making the award next hereinafter mentioned, the Court shall issue a written notice to the other party requiring him to attend on the date and at the place specified in the notice, and shall depute a proper person to make the division, estimate or appraisement and to direct by whom the costs of each party are to be paid.

Procedure in case of dispute.

The award of such person in respect of the said division, estimate or appraisement and costs shall be final, unless within three months from the date thereof either party institutes a suit to set it aside.

CHAPTER IV.—OF EJECTMENT.

19. No tenant having a right of occupancy in any land shall be ejected therefrom otherwise than in execution of a decree.

Ejectment of tenant with right of occupancy.

Such decree shall not be made, unless

(1) at the date of the decree, a decree against such tenant for an arrear of rent in respect of such land has remained unsatisfied for fifteen days or upwards; or

(2) the landlord tenders to the tenant, in addition to any compensation to which he may be entitled under sections twenty-seven and thirty-seven (but subject to deduction in respect of the arrears of rent, if any, payable by him), such compensation as the Court thinks fit, not less than fifteen, and not more than thirty times the amount of the net annual profits receivable by the tenant in respect of such land on an average of the three years next before the date of the tender.

Nothing in the last preceding clause shall be deemed to apply to a tenant belonging to any of the classes specified in section five, or to a tenant when he, or the person from whom he has inherited, has continuously occupied such land for thirty years or upwards.

20. A tenant not having a right of occupancy may be ejected—

Ejectment of tenant without right of occupancy.

first, if a decree has been obtained against him for arrears of rent or for ejectment; or

second, when he is not holding under an unexpired lease, or an agreement, or a decree of Court, by notice by the landlord in manner hereinafter mentioned.

21. Notwithstanding anything herein contained, no tenant shall be ejected from the land in his occupation, except between the fifteenth day of April and the fifteenth day of June, unless while the rent in respect of such land is in arrear, he has failed to cultivate the land in accordance with the terms on which he holds it.

Time of ejectment.

Notice of Ejectment.

Notice of ejectment.

22. The notice of ejectment shall be written in the vernacular language of the district: it shall specify the lands from which the tenant is to be ejected; and it shall inform him that, if he means to dispute the ejectment, he must institute a suit for that purpose on or before the fifteenth day of May next after the service of the notice, or quit the land on or before that date.

The said Lieutenant Governor shall determine what, for the purposes of this section, shall be deemed to be the vernacular language of each District in the territories under his government.

Service of notice.

23. On the landlord's application to the Tahsildar or other officer authorized to serve such notices, the notice shall be served by him on or before the fifteenth day of April, and the landlord shall pay the costs of service.

The notice shall, if practicable, be served personally on the tenant.

But if he cannot be found, service may be made by affixing the notice at his usual place of residence, or, if he does not reside in the district wherein the land is situate, at some conspicuous place in the village wherein the land is situate.

Power to alter dates for suing to dispute, and for serving notice of ejectment.

24. The said Lieutenant Governor shall have power, from time to time, by notification published in the official *Gazette* not less than six months before such notification is to come into force, to fix, for the purposes of sections twenty-two and twenty-three, in all or any of the Districts under his government, any two days other than the days fixed in the same sections:

Provided that between the days so fixed by notification, there shall be an interval of at least one month.

Cessation of tenancy on failure to contest notice.

25. If the tenant on whom such notice of ejectment has been served fails to institute, on or before the fifteenth day of May next after the service, or, in case the said Lieutenant Governor fixes for the purpose of section twenty-two any day other than the said fifteenth day of May, than on or before the day so fixed, a suit to contest his liability to be ejected, his tenancy of the land in respect of which the notice has been served shall be held to cease on that day.

Assistance to eject.

When assistance to eject may be given by Court.

26. If no such suit be brought, or if such suit be brought and dismissed, and the landlord require the assistance of the Court to eject any person whose tenancy is alleged to have ceased under the provisions of section twenty-two, he may apply for such assistance; and if the Court be satisfied that notice of ejectment was duly served on such person, it shall, subject to the provisions of section nineteen, give such assistance accordingly.

Nothing done by the Court under this section shall affect the right of any tenant to institute a suit against his landlord on account of illegal ejectment, and to recover compensation for the same.

Growing Crops.

Compensation to ejected tenant for growing crops.

27. Any tenant ejected in accordance with the provisions of this Act, shall be entitled to receive from the landlord the value of any growing crops or other ungathered products of the earth belonging to such tenant and being on the land at the time of the ejectment:

Provided that if the land has been sown or planted by the tenant after the service of the notice mentioned in section twenty, he shall not be so entitled, unless, after such [illegible] essly authorized him to continue to occupy the land.